COMPREHENSIVE TRADE LEGISLATION

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

AND ITS

SUBCOMMITTEE ON TRADE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

H.R. 3

TRADE AND INTERNATIONAL ECONOMIC POLICY REFORM ACT AND OTHER PROPOSALS

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COMPREHENSIVE TRADE LEGISLATION

THURSDAY, FEBRUARY 26, 1987

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:36 a.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman Gibbons. Good morning, ladies and gentlemen. Today is the third day of hearing of this Subcommittee on Trade looking at trade actions we expect to take this year in the form of H.R. 3, and modifications thereof as is presented by the members. And certainly we have to take into consideration suggestions of the administration in all of this.

We ordinarily request witnesses to summarize their statements. I have found from past experience, that if some witnesses summarize their statements they will do better to have read them, because they take longer. So, each witness adjust to himself what he needs to do. I wish that all witnesses though will pay attention to the fact that we do have a great number of witnesses today, and to realize that not only do we have a great number of witnesses today, but there are many people who could not make the agenda.

So, be as succinct as possible, and with the assurance that all statements by all witnesses will be included, in full, in the record. Our first witness, this morning, is the Honorable Owen Bieber. Mr. Bieber is the head of the great International Automobile Workers Union in our country. And Owen, we would be happy to hear from you first.

STATEMENT OF OWEN F. BIEBER, PRESIDENT, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW, ACCOMPANIED BY DICK WARDEN, LEGISLATIVE DIRECTOR, AND STEVE BECKMEN, ECONOMIST

Mr. Bieber. Thank you, Mr. Chairman. Good morning to you and the members of the subcommittee. I thank you very much for inviting us to testify before your subcommittee this morning. I heard what you said, Mr. Chairman, and we have submitted a prepared statement, and we would like that put in the record. And I also heard what you said relative to summarizing that statement. I do have it in summary form. I think the summary is really short.

Chairman Gibbons. You represent hundreds of thousands of workers, and we appreciate your position. So. you take your time.

Mr. BIEBER. I have with me this morning Dick Warden, our legislative director here in our Washington office, and also Steve Beckmen, international economist. I am pleased to appear before you today to present the views of the UAW on needed changes in U.S. trade law and policy.

Legislation before the subcommittee, H.R. 3, represents an important step forward toward our shared goal of a U.S. trade policy that strengthens our economy, and promotes the interests of America's working people. There is no more compelling evidence of the need for a new U.S. trade policy than the incredible trade deficit that our Nation continues to accumulate. For 1986, the deficit reached $170 billion. The impact on millions of workers, their families and the communities where they live has been devastating.

The total of manufacturing industries with a deficit of $145 billion for 1986 has been especially high. Mr. Chairman, members of the committee, no other country in the world would allow this tremendous imbalance to occur, because at the first sign of a persistent, significant trade deficit, other countries mobilize their trade policy apparatus, and develop strategies for restoring trade balance. Yet, in the United States, when representatives of labor and a large number of industries speak of the need to reassess our trade policy, and focus attention on the growing trade deficit, we are attacked by the administration.

We and our allies are branded with a label that is used for anyone who questions the continued wisdom of a passive, unresponsive trade policy. And that label is "protectionist." The House of Representatives came under similar attack for having the courage and the conviction to pass trade legislation. But the administration, in its trade policy, has closed its eyes to the significant and permanent changes in the world economy that have undermined any relevance that term may have had to the reality of international trade.

The world has changed in ways that have made our current trade policies extremely dangerous to the present and future economic well-being of our country and its people. Evidence is mounting that the dividends of the misguided trade policy of this administration include increased poverty, lower family incomes, a widening of income equality, and the rapid erosion of the nation's industrial base.

The present trade policy is a failure, and it must be reversed now. The bill passed by the House of Representatives last year, and reintroduced in 1987 as H.R. 3, recognizes the danger inherent in the present passive trade policy, and mandates action in several areas that we believe are most important.

The first priority of a realistic trade policy must certainly be a reduction in the U.S. trade deficit. The health of important manufacturing industries is being undermined, and workers are being pushed out of good paying jobs and into lower paid jobs, or worse yet, unemployment. The United States must take the initiative to reduce its deficit, and at the same time reduce the large worldwide surpluses of Japan, West Germany, and others. A proposal along these lines was sponsored by Congressman Gephardt, and included in the trade bill that passed the House last year by an overwhelming vote. With the trade deficit even higher for 1986, the need for action now is even more urgent than it was when that vote was taken.

Even though this administration claims to be concerned about foreign unfair trade practices, it has opposed treating the denial of basic labor rights abroad as an unfair practice. The current policy of ignoring the repressive labor conditions in the production abroad of U.S. imports, from countries with dictatorial governments, is an affront to the American workers and it should be to all fair minded people. The provision on labor rights sponsored by Congressman Pease and included in H.R. 3 would permit retaliation against the abuse of workers' rights abroad.

And, despite a lot of administration talk about opening up export markets, U.S. exports have stagnated since 1980. In real terms, they have fallen. In dealing with the debt crisis in Latin America, the administration chose to protect the interest of the American banks at the expense of exporters. To generate funds for paying back foreign loans, the debtor countries were forced by world lending institutions, with U.S. Government support, to severely restrict imports. As the major trading partner of these countries, the United States has been hurt most by the cutbacks.

The administration's trade policy has been passive when it should have been active in defending the interest of exporters. Trade policy must go beyond the critical need to remedy the trade deficit and address the trade problems of individual industries. The domestic automotive industry, for instance, is facing a sharp increase in imports from a variety of countries. And, many of these vehicles are being imported by General Motors, by Ford, and by Chrysler. They are increasingly replacing U.S. production of small cars with what we call captive imports.

In addition, the vehicles assembled in the United States by the Japanese companies who have come to our shores contain imported engines, imported transmissions, imported stampings, and many other parts that are not domestically produced. The big three are also increasing their imports of parts, raising the value of imports still higher. Now, this combination of factors pushed the import share of domestic car sales over 28 percent for the first time ever in 1986, and the trade deficit in automotive products to more than $50 billion.

These figures are certain to grow in the next few years. The result of that will be putting half-a-million autoworkers' jobs at risk, as well as hundreds of thousands more in such industries as steel, aluminum, textile, rubber, glass, and computer. Yet, the administration has taken no position on the appropriate level of exports of Japanese cars to this country. This blind indifference to the fate of crucial domestic industries must end.

Mr. Chairman, the role of trade policy in determining the future of the American economy is critical. Our trade policy should be a force for strengthening U.S. industries, for improving the living standards of Americans, for increasing employment and supporting equitable economic growth. And I submit, to succeed, the administration must recognize the world as it is today. Government intervention in the economy is the norm today, and the structure of industries with international markets is extremely complex.

To defend the interest of this country, our trade policy must be flexible, but it must be tough. It must distinguish between the interest of multi-national companies and the U.S. interest. It must look at long-term as well as short-term results. And we believe passage of H.R. 3 would be an important step in this direction. I want to thank you, Mr. Chairman, for giving me the opportunity to make these remarks. I would be pleased now to answer any questions that you or other members of the committee might wish to raise.

[The prepared statement follows:]

STATEMENT OF
OWEN BIEBER, PRESIDENT
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
before the
SUBCOMMITTEE ON TRADE
# of the
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

February 26, 1987

Mr. Chairman, my name is Owen Bieber. I am president of the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). We are pleased to be here today to present our views on H.R. 3 and its importance for the nation. The UAW believes that changes in trade policy are needed if we are to reduce the U.S. trade deficit and assure that international trade contributes to our objective of a diversified, full employment economy that produces an equitable distribution of income and expanding opportunities for workers. Several of the measures included in the bill before this Subcommittee would bring about such changes in policy. They must remain in the trade legislation that will pass the Congress this year if the country is to effectively address its trade problems.

The desperate need for a new trade policy is captured in a single indicator -- the massive U.S. trade deficit. From $36 billion in 1980, the merchandise deficit has grown each year, to $170 billion for 1986. This ballooning figure is responsible for the loss of millions of jobs, especially in manufacturing industries where a 1980 trade surplus has fallen to a deficit of $145 billion. In automotive products, the 1986 deficit by far exceeded $50 billion compared with an $11 billion deficit in 1980. The deterioration in the trade balance characterizes nearly all sectors of the U.S. economy, including agriculture and high technology industries. Millions of unemployed and underemployed Americans and thousands of depressed communities can explain their plight by pointing to the employment cutbacks and plant closings resulting from trade problems.

In nearly every industry, U.S. exports have stagnated, while imports have skyrocketed. Once strong U.S. exporting industries have seen their share of world markets decline, just as domestic industries have lost market share to the growth of imports.

The fact that Administration officials responsible for trade policy could allow this incredible trade deficit to accumulate is the most powerful argument favoring the need for a new U.S. trade policy. The UAW, along with other worker representatives and a variety of business interests, described the danger posed by our passive trade policy years ago, yet we were ignored by Administration officials.

Mr. Chairman, there are those who attribute the deterioration in U.S. trade performance to macroeconomic policy, exchange rates, and the insufficient international orientation of U.S. businesses. These and others point to the trade deficit as a sign of a lack of "competitiveness" in the world market. These explanations all have one thing in common — they minimize the role of U.S. trade law and policy in creating the severe problems of the economy and they demand no fundamental changes in the way the U.S. government interacts with foreign governments to regulate international trade.

The claim that U.S. businesses are not interested in foreign markets is especially irritating to those of us who have watched in anguish as American companies close domestic operations and move abroad. While many companies have joined this parade overseas only in the last few years of intensified international competition, the internationalization of production by U.S. firms has been going on for decades. These overseas operations have not only replaced U.S. exports, but they have in many cases replaced production for the domestic market with imports. Commerce Department data for 1982 shows that U.S. multinational corporations accounted for 46 percent of all U.S. imports and that, of that portion, one third was shipped from their own foreign affiliates. The foreign involvement of American firms is extensive. It has been used to build the profitability of individual firms, regardless of the consequences for American workers and communities.

In the auto industry, imports of assembled vehicles and parts by the domestic producers have grown dramatically in recent years and current plans call for continued increases. Cars imported by the U.S.-based auto producers for sale under their own nameplates were only 6 percent of total car imports in 1984, but are expected to reach 20 percent in 1988. This will mean an increase in these "captive" imports from under 150,000 to more than 750,000 in only four years. They will be entering the U.S. from Mexico, South Korea, Taiwan, West Germany, Japan and Australia. The impact on American employment and production will be severe, especially in the small car segment, where most of these imports are concentrated. A similar process has begun in midsized and heavy duty trucks, as domestic producers bring in trucks from Brazil and Japan to sell as their own.

Mr. Chairman, I would like briefly to discuss another current explanation of the serious trade problems of American industries — that they lack international "competitiveness". On the one hand, the large trade deficit makes it painfully obvious that U.S. producers are having difficulty competing in international trade. On the other hand, simply saying this does not shed any light on why these difficulties exist. The number of specific proposals of those addressing this issue is extremely long, ranging from increased funding for foreign language study to changes in U.S. anti-trust and tax laws to changes in industrial relations and worker compensation. Many of these proposals have been poorly thought out, or are intended to achieve an objective that has nothing to do with "competitiveness". We believe many of the proposed changes in industrial relations fit into this category. Our support for additional investment by U.S. industry in this country and for additional funds for education are longstanding and pre-date the present initiatives. We will continue to support public policies and industrial policies that help our members achieve their individual potential while strengthening our economy, but these policies alone will not eliminate our problems in international trade.

While economic policies certainly have an impact on trade flows, the trade policy carried out by the Administration is the true indicator of how the Administration sees the relationship of international trade to the rest of the economy and the role of the U.S. in the world economy. Historically, the open U.S. market has been used to encourage economic development in politically friendly countries and to assure American firms that moved overseas of a market for their products. When the U.S. was far and away the world's strongest economy, the impact of the open market on domestic employment and production was small and demand for U.S. exports was strong. The Reagan Administration has ignored the changing world-wide situation, and has carried on as those before it -- its trade policy is to keep the U.S. market as open as possible while seeking to open markets in other countries to a similar degree.

In today's world economy, however, the presumption that an open U.S. market has no important adverse impact on the domestic economy is both shortsighted and dangerous. The number of countries interested in, and capable of, exporting to the U.S. has increased dramatically, including developing as well as developed nations. Advanced technology and capital are exported daily around the globe to take advantage of low wage rates, tariff or non-tariff trade barriers, tax abatements, investment incentives and other government policies to attract foreign investment. In addition, industries abroad have been given government assistance in a wide variety of ways to stimulate growth in capacity much greater than domestic demand. The large and open U.S. market has been a consistent magnet for the production of these industries, including steel, autos, textiles and apparel, electronics and, most recently, semiconductors, personal computers, telecommunications equipment, petrochemicals and more.

These factors have contributed to the increase of U.S. imports from $253 billion in 1980 to $362 billion in 1985 and approximately $385 billion in 1986. Even with this incredible increase in imports, the Administration insists that there is no need to take action to defend the jobs of the millions of American workers displaced.

Because of its commitment to a wide open U.S. market, Mr. Chairman, the Administration has responded to the political demands for action on the trade deficit by focusing on expanding U.S. exports. This has taken the form of negotiations over a limited number of narrowly defined unfair practices that restrict U.S. exports and initiation of a new round of multilateral trade talks aimed at reducing barriers to expanded trade. Despite the attention given to export promotion by the Administration, U.S. exports in 1986 were lower than in 1980 in current dollars. Taking inflation into account, exports have declined substantially. In fact, government policies abroad limit markets for U.S. exports in many ways. The chances of substantially reducing U.S. trade deficits by a large and rapid expansion of exports are extremely slim.

The Administration has placed most of its trade effort on getting a new round of multilateral trade negotiations (MTN) underway and making certain that trade in services and investment issues, now uncovered by international rules, were included. The reasoning is that the U.S. has an advantage in service industries and could greatly expand such exports if barriers abroad were eliminated. Yet, in the category of business services, where Administration interest is focused, imports are growing nearly as rapidly as exports — there is no reason to believe the U.S. surplus will grow substantially even with new trade rules. Unfortunately, the prospect for overall U.S. gains in the new MTN round are no better than in the services sector alone.

We believe that the Administration's commitment to concepts of the past, its laissez faire response to the problems of U.S. industries, and its ineffective efforts to convince foreign governments to allow open access to their markets, have contributed to a serious deterioration in U.S. economic capacity and potential, to an increase in poverty and a decline in family incomes, to higher unemployment than is warranted and to increased income inequality. A number of recent studies have shown that the proportion of middle-income families has declined and lower-income families increased and that many manufacturing industries have been badly weakened by import competition, lost exports and the serious problems of their domestic customers (farmers, oil producers, other manufacturers).

This is a failed trade policy, Mr. Chairman, and we need a new one if the future is to improve for workers, their families and their communities. And we can achieve this brighter future for Americans in a way that recognizes the legitimate aspirations of workers in poor and less developed nations: we can share growth, rather than pit one nation against another.

The first result of a realistic appraisal of American interests in the world economy would be a strong effort to reduce the worldwide U.S. trade deficit and the large worldwide surpluses of other nations. The current imbalance is widely acknowledged to be unsustainable and harmful to stable economic growth, yet the U.S. deficit continued to grow throughout 1986. Since the U.S. deficit is only the counterpart of the large worldwide surpluses run by Japan, West Germany, Taiwan and other nations, the solution is to reduce the imbalances in tandem. The fact that nearly all other countries of the world keep a tight rein on their merchandise and current account trade balances means that the passive policy of the Administration toward imports has concentrated the worldwide deficit (and the economic dislocation resulting from it) in the U.S., allowing movement toward greater international balance through U.S. action.

A proposal along these lines is included in H.R. 3. The provision sponsored by Congressman Gephardt would force nations with excessive surpluses with the U.S. to gradually reduce them. Since it ties this requirement to the unfair treatment of U.S. exports, the provision has the additional feature of improving the trade imbalance by encouraging the surplus nations to expand their purchases of U.S. exports, thereby increasing world trade.

We have described to this committee in the past the pain inflicted on workers in manufacturing industries by the worsening of the U.S. trade deficit. The sharp increase of the deficit in 1986, despite significant appreciation in the value of the currencies of some of the countries with large surpluses against the dollar, has only added to the number of victims and worsened their prospects for reemployment.

The rising indebtedness of the U.S. to foreigners adds further immediacy to the need for bringing the trade deficit down. The U.S. has surpassed Mexico and Brazil to become the world's largest debtor, creating obligations to make payments abroad for years to come. These payments are lost to the U.S. economy -- they cannot be used to fund investment or consumption. The living standard of Americans will be lower as a result. Even when the annual trade deficit starts to decline, our foreign debt will continue to grow. Rapid action is needed to mitigate the problem.

The longer the U.S. trade deficit remains at the unprecedented levels it has reached in recent years, the more wrenching will be the process of restoring balance. The ability of U.S. producers to respond to opportunities for growth becomes further compromised by the continuation of shrunken markets and financial constraints. In our judgment, Mr. Chairman, action must be taken in 1987.

U.S. export industries are in similar need of a trade policy that defends U.S. production and employment. The variety of barriers imposed by foreign governments against our exports has been catalogued by the Office of the U.S. Trade Representative for a second year and the list is extremely long. The vast majority of these barriers have been in place for years, yet they have been ignored by this Administration and previous Administrations.

The Administration has begun to use the unfair trade practice statute of U.S. trade law to let other countries know what it considers unacceptable behavior in international trade. Unfortunately, the first set of self-initiated cases has covered problems that are not likely to set precedents to open up large numbers of U.S. job opportunities. Cases should be chosen for their domestic impact, not their public relations value. The Gephardt amendment in H.R. 3 offers a much stronger incentive for our trading partners to open their markets to U.S. exports. The case by case approach cannot achieve sufficient results.

There is one area of unfair trade practices, in which the Administration has opposed taking action, that should be used to set a precedent in defining unacceptable trading practices -- the denial of internationally-recognized worker rights. The American sense of fair play is violated when products made under repressive labor conditions are exported to this country and displace our workers. There are many countries around the world that have built an advantage in international trade by preventing workers from exercising the right to organize and bargain with employers, by failing to adopt minimum standards for conditions of work, or by allowing forced or child labor. The U.S. should officially repudiate any trading advantage obtained in this way and retaliate against the exports of such countries. Without a change in the current U.S. indifference toward the plight of workers abroad, trade policy will continue to be viewed with distrust by our members and all American workers. A provision, sponsored by Congressman Pease, to make the denial of internationally-recognized worker rights an unfair trade practice is included in H.R. 3. It is an essential ingredient in a trade policy that assists workers in developing countries in their efforts to improve their living standards and working conditions while eliminating a source of destructive competition for American workers.

An Administration trade policy that has a double negative effect on U.S. production is its failure to take a firm position on the debt crisis facing a number of developing countries, especially in Latin America. This region has traditionally been a strong market for U.S. exports. The way the debt crisis in Latin American countries has been managed by the International Monetary Fund (IMF) and World Bank in conjunction with international banks — with official U.S. government support — has forced the countries to run large trade surpluses to generate the money to pay back the banks. To accomplish this, Latin American debtors have slashed their imports and stimulated exports. The U.S. is the primary trading partner of these nations, and our exports have been hard-hit by the cutback in Latin American imports; our industries have faced serious import competition because of the increase in their exports. American workers in agricultural and construction machinery, aerospace and machine tools have lost export jobs, and auto parts workers have lost jobs due to the increase in U.S. imports.

There is no U.S. trade policy that addresses the problem of Latin American debt, despite the fact that the program the Administration is pursuing amounts to protectionism for the bankers, assuring that they are paid in full, while hundreds of thousands of American workers lose their jobs because of the trade impact. This is a serious failing in current trade policy. A new trade policy should demand a fair distribution of the impact of the debt crisis that requires the banks to share in the burden. The Administration should, in general, be sensitive to the trade impact of any developments in world financial markets. Our trade policy should be flexible enough to defend the interests of U.S. producers as international financial conditions rapidly change.

The Administration's treatment of industries that file petitions for relief from imports must also change. Under current law, an unnecessarily tough standard of injury due to imports must be met before an industry even receives consideration for trade relief. If a petition passes that hurdle, the President may refuse to impose quotas or higher tariffs to defend the U.S. industry. In the recent past, findings of injury to the copper and shoe industries were ignored by the President, and no action was taken to defend their declining U.S. production.

Mr. Chairman, we strongly believe that domestic industries deserve support from the government when imports cause serious damage. An industry that is found to be injured by imports should be assured of some relief through government action. The discretion allowed the President in current law has resulted in many industries that have lost jobs and output because of imports receiving no assistance from the U.S. government. The law also sets a standard of injury higher than that included in international agreements. The number of industries that even qualify for relief is minimized by this standard.

The purpose of trade policy in the area of domestic industry relief from imports should be to facilitate a strengthening of the industry in the context of the U.S. economy and the world marketplace. Present policy is to let struggling industries fend for themselves and assist only the small number that meet the stringent conditions of U.S. law or are able to generate enough political pressure to force the Administration to act. Companies left on their own have often made choices that undermine the U.S. industry, by moving plants abroad, purchasing imports to meet domestic demand, or giving up and going out of business, leaving the market even more open to imports. The law must require the Administration, as the representative of the interests of the American people and not multinational corporations, to take a more active role in shaping the economic future of America if we are to maintain our industrial strength.

Dealing with these problems of trade law and policy is only the first step in developing a U.S. trade policy that defends the interests of American workers. We also need new policies to respond successfully to the problems facing individual industries hurt by imports and those suffering from lost export markets. U.S. trade policy must, in both cases, attempt to strengthen domestic production, stimulate necessary investment and increase the stability of employment for workers in the industry.

The auto industry makes a good case study of how our trade policy toward industries injured by imports must be changed. In this case, as in most in which action is taken, the Administration was concerned only with heading off Congressional action to defend the industry from a sharp increase in the share of the domestic market supplied by imports. The Voluntary Restraint Agreement (VRA) negotiated with Japan in 1981 was an insufficient policy response in several respects: its initial three year duration was too short to permit an adequate reaction by domestic manufacturers to the increase in demand for small cars; the limit of a number of vehicles rather than a share of the market allowed imports from Japan to take a larger market share during the severe recession than was anticipated; Japan's exports of auto parts and trucks were not restrained, allowing the total automotive industry trade problem to grow, and; no specific commitments to U.S. investment and production were obtained from domestic producers in return for the restraints.

Because of these deficiencies in the VRA, the UAW supported legislation to achieve the objectives for U.S. trade policy noted above; the domestic auto content legislation would have done this. Its passage in the House in 1982 and 1983 was not, however, matched in the Senate.

One objective of the negotiated restraints in effect from 1981 to 1985, to convince a range of Japanese auto producers to build cars in the U.S., was at least partially achieved. However, this has not resolved the difficulties of U.S. auto production and employment. The domestic industry is now facing another import crisis because of the failure of the Administration's auto trade policy to take into account the reality of the world auto market and the difference between the interests of the domestic industry (workers, parts producers, etc.) and the multinational U.S.-based firms that are its most important producers.

The world auto market outside the U.S. is characterized by government imposed domestic content requirements, local production requirements and import restrictions (high tariffs, informal restraint agreements with exporters, strict import quotas, etc.) By setting a relatively short period of restraint on imports into the U.S., the Administration was telling the U.S.-based companies that the U.S. would once again be the only open auto market and that it would be a target for the excess capacity of existing auto producing nations and the new capacity of countries aspiring to become auto exporters (South Korea, Taiwan, Mexico, Brazil, Yugoslavia, Malaysia, Australia). This signal was not lost on the Big 3. They proceeded to use the absence of constraints on their actions, which they had insisted upon when the VRA was negotiated, to make arrangements to increase their own imports ("captives") of small cars and to expand their imports of parts, including engines and transmissions. The companies correctly anticipated an extremely competitive U.S. market in the post-restraint period, and they focused their domestic investment on their more profitable vehicles, thus ceding the expanding market for small cars to importers (including themselves). Because the companies could raise their own profits by selling imported rather than domestically produced small cars and by cutting costs through the use of imported parts and components, the companies have protected themselves from the inadequate trade policy of the Administration.

While the Big 3 have been protecting themselves by becoming importers, Japanese auto makers have built U.S. plants, or have plans to do so, for the same reason -- to protect their U.S. sales and profits. The UAW welcomes these investments and the jobs for American workers they produce, Mr. Chairman. But we are disappointed at the low level of U.S. content in the vehicles assembled here. Unless the domestic content of these vehicles (transplants) increases, the higher level of U.S. production by Japanese auto companies will worsen the U.S. trade deficit with Japan and reduce employment in the domestic parts industry. Our own analysis shows that the total U.S. employment generated by a transplant facility is only one-fourth that produced by a traditional domestic plant, in which the vehicles include about 90 percent domestic content. We are anxious to see transplant production contribute to an improvement in our bilateral trade balance and to more employment opportunities for U.S. workers.

Taken together, the current trends in the auto industry will produce an import share of 35 percent and an additional share of nearly 15 percent for low U.S. content transplants as soon as 1988. This would leave a market share of only about 50 percent for fully domestic cars which, themselves, will contain a higher value of imported parts than they do now. The figures for 1986 sales show that we are well on our way to this result. Imports in 1986 accounted for sales of 3.2 million cars, for a market share of 28.3 percent, up from 25.7 percent in 1985.

The effects of these developments will be a serious erosion of employment in the U.S. industry. There are about half a million jobs in this industry at stake, nearly a third of current industry employment, as a result of the trade policy pursued by the Administration. This would produce untold hardship for the workers and communities affected, and reduce the size of an important, high technology domestic industry.

There is still time to prevent the unnecessary loss of these good paying jobs and the high value-added production the auto industry is responsible for, but there is not very much time. A reversal in U.S. trade policy is required. The Administration should negotiate restrictions on vehicle imports sufficient to defend the production and employment levels of the domestic industry. It must also assure that further investment in U.S. production, by domestic and foreign companies alike, takes place. Commitments by domestic producers to make those investments, though, must be an integral part of the restraints. A high level of imports would remain, but a competitive, strong domestic industry would also be maintained, providing needed jobs for American workers and keeping the industrial base of the nation sound.

This type of analysis of world market conditions and of the interests of U.S. firms should be conducted for all domestic industries facing serious import competition. The interests of American workers and the domestic economy must be assessed before imports or U.S. company outsourcing or foreign investment weakens domestic production beyond the point of recovery. Many essential U.S. industries (machine tools, semiconductors) are perilously close to that point and a new trade policy is needed to preserve them.

The UAW strongly believes that the purpose of trade policy is to set the standards for our international trade in such a way that trade benefits the U.S. economy and U.S. workers. Trade policy should not be an absolute statement of how the world ought to behave to achieve a textbook vision of "free trade" or "maximum efficiency". It should acknowledge the way governments and businesses in the world we live in behave and, understanding that, attempt to achieve the best results for Americans given that reality. We believe that H.R. 3 moves in the direction of such a trade policy.

Mr. Chairman, I have only touched on a few of the important trade policy issues facing our nation. The importance of passing trade legislation as quickly as possible and directing those responsible for trade policy to defend U.S. employment, production and income must not be ignored. The health of our industrial economy and our standard of living depend on it.

Thank you, Mr. Chairman. I appreciate the opportunity to have shared the views of the UAW with you.

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Chairman GIBBONS. I think that probably one of the crucial mistakes made by Government affecting your industry, was when the first petition was filed by your industry in the 201 action. And I believe that we are going to correct that in this statute this time. I believe temporary relief had been granted at that time. Perhaps the industry and Government could have come up with some kind of proposal that would have helped the modernization process so the American automobile industry could be competitive. Having said that, I hate to say that it sure has taken us a long time to get the thing straight. But I believe we will in this statute this time.

I support the Pease language. I am sorry that some people see all kinds of hobgoblins in it. I have read it and read it. I cannot see any hobgoblins in it. I have read Mr. Gephardt's language and spent all weekend going over it. And as I read it, it really gets down to that we have got to do some hard, head-to-head bargaining, on a bilateral basis, with just a few people involved in that industry to get some of the things straightened out.

I also regret that the Japanese Government—and I have taken it up with them a number of times—does not grant us the same kind of reciprocity, and entry of our automobiles into their market, that we grant to them, as the entry of their automobiles into our market. I think it is atrocious, but they do not do it. I am not sure that it would make a difference in a whole lot of jobs in the country, but I think it is a matter of comity. They ought to treat us the same way we do in that particular area.

I want to commend you also for pointing out that there is two sides to this equation, and that is since 1980 we have actually lost ground in exports. I think our policy toward Central and South America and the debtor nations down there has been blind. We have told them over and over again, cure your problems by exporting more and importing less, and I regret that this committee does not have some kind of control over that policy.

If we could find some way to do that, I think we ought to exercise that jurisdiction. Can you suggest anything to us that could be done toward getting American votes in the World Bank and the IMF and things of that sort, to support a more rational policy toward debtor nations than I think we have followed. I really think a part of your problem has been that IMF and the World Bank and export-import and all of these people, and maybe Federal Reserve, have focused on trying to save our financial institutions. We certainly ought to save them, but I think we have had a Draconian program that the American worker has had to pay for through the loss of jobs because of that. Do you have any suggestions in that area.

Mr. BIEBER. I do not know that I have any direct suggestions. I can say this to you, Mr. Chairman, I serve on the Bretton Woods Committee, and we have submitted some suggestions. I am not suggesting that we have submitted programs per se, but I guess the point that we have been trying to make with those people, Mr. Chairman, is precisely what I think I hear you saying this morning. I am not advocating that we ought not to be concerned about protecting the financial institutions. What I am saying is, that the tradeoff that we have had has been a very unbalanced one, because the tradeoff has been a lot of American jobs.

When we set a policy that says to those governments, you have to export more and import less, we put additional pressures upon our own market, and that costs us American jobs. We have to find some answers to those problems.

Mr. Chairman, I wonder if I might just take a minute to pick up on one other point that you made. And that is the point of opening the doors, and I think you used the example of Japan. That is a fair example to apply to some other countries. What we have to look at is total fairness in our trading policy. I am not suggesting that if you open the doors totally to the Japanese market that that would solve our problem.

Let me point out another thing that I think we can do, and we should do something about. Let us take a look at the parts industry for a moment. The doors to the parts industry in Japan are closed. We have some opportunity in the MOSS talks that are reconvening. I sent Secretary Baldrige a fairly lengthy letter within the last week again pointing out the urgency, and some things that I thought that we ought to do. And here is an example where our American companies cannot penetrate that market in Japan. And that is, to me, unfair. But then, let us take a look at the other side of the coin.

We advocated, as you well know, that the Japanese, among others, if they want to participate in this market, should bring their plants to these shores. But we certainly, sir, never advocated that what we were talking about was basically "kit" plants. And that is what is happening to us. You have the transplants that are coming to our shores. But, first of all, the drive trains, the engines, the high labor-intense pieces of those automobiles are imported. When you do not build engines in America, you really do not train new engineers to build the engines of the future. We ought to remember that those engines are important to us in more than just our automobiles and our trucks; we ought to think about the future as it applies to the defense of this country.

But here is a situation where these plants are brought to our shores, and, first of all, a big piece is brought from Japan preassembled. But then when the dollar-yen begins to flow to a more meaningful level, one compared to another, it becomes more lucrative to purchase more parts in America. What we are seeing happening is that they are not purchasing these parts from American companies, but now they are bringing their parts companies to the American shore to produce parts for those automobiles. They are becoming competitors to our American autoparts manufacturers, with the big three and otherwise.

Now, let me give you an example of what is happening to us so far as job production out of these transplant plants. If you take an American domestic automobile plant—General Motors, Ford, Chrysler, especially General Motors—for every assembler that works on an assembly line, there is 11.3 jobs that flow out or flow to that assembler. In the case of the transplants it is 3. So that gives you a pretty good idea of what is happening to us.

So, first of all the doors are closed to our parts suppliers going into the Japanese market. They are also literally being closed now to the American companies producing parts for the transplant plants that are producing vehicles now in this country. We have an overcapacity in the automotive industry right now of 2 million units. The announcement of General Motors to close 11 plants will take approximately 1 million units out of that idle capacity. But if we do not do something about the example that I just gave you, by 1990 you are going to build another additional 2 million units. And the announcement of 11 plants closed by General Motors is going to be repeated over three or four more times.

That is what I mean when I talk about these enormous numbers of jobs that are going to be lost in the American auto industry. But when I talk about that number, do not forget the multiplier that I just used. And that rolls into hundreds of thousands of more American jobs that are going to go by the wayside. Mr. Chairman and members of this committee, we cannot continue on this course, unless we really want to reduce tremendously the standard of living and opportunities for our children and grandchildren.

Chairman GIBBONS. Well, I apologize to my committee members for exceeding the red light limit there. I hope you will forgive me. I am very aware of what is going on now in the MOSS talks. And Congressman Levin, Congresswoman Captor, Mr. Pease and some of the others have been very active in working on this problem. And if you are not aware that I sent to negotiators the other night, I will be happy to give you a copy of that. I think that it is extremely important for the relationship of the United States and Japan, that this matter get settled successfully on an open market basis.

I expect the Japanese to open up their markets to our parts. I do not care for, and will not tolerate, the cartel-type operation that they seem to be promulgating upon us, and we are going to watch that extremely closely. I am disturbed that apparently no substantial progress has been made in those MOSS talks, and I just want all the negotiators to know that there are people looking over their shoulders very critically right now. Mr. Crane?

Mr. CRANE. Thank you, Mr. Chairman. I would like to welcome you, Mr. Bieber, before the committee, and say we appreciate your input. Our colleague, Congressman Armey, was scheduled to testify this morning but was unable to appear. However, he did submit a prepared statement in which he indicates that in the last 10 to 15 years, the percentage of manufacturing jobs in the United States has gone from something like 25 percent of the workforce down to about 18 percent. Does that correspond roughly to your figures?

Mr. BIEBER. I think we would agree basically.

Mr. CRANE. Mr. Armey argues that manufacturing has remained constant at roughly 20 percent of GNP for 25 years now, while experiencing shrinkage in the number of manufacturing jobs; and the conclusion he reaches is that we have increased the productivity of American workers.

Mr. BIEBER. That we have increased?

Mr. CRANE. That we have increased productivity in manufacturing.

Mr. BIEBER. Yes, I agree with you, Congressman. I thought it was a very interesting set of figures. The president of Ford Motor spoke before the Detroit Economic Club in December of 1986, just before the holidays, and he made the point that we experienced phenomenal productivity increase in the auto industry.

I am quoting his figures: he pointed out that the American auto industry had increased productivity on the average of 6 percent for each of the last 6 years. If you compound that figure, it is well in excess of roughly a 40-percent increase over a 6-year period, which is an enormous increase. We have done a lot of things in the industry to improve productivity.

Mr. Crane. In addition, Congressman Armey notes that we have created 25 million new jobs in this country since 1975. In the last 12 years we have created 25 million new jobs, in contrast to the European Community which has been static at zero growth in job creation. And the Japanese have not increased the number of jobs in Japan in any remarkable way over the last 20 years.

So we have this phenomenon of the most explosive ongoing job growth in the history of the world. At the same time, we are getting vastly greater productivity out of workers in the manufacturing industries while manufacturing has remained roughly a constant as a percentage of GNP.

While I would agree with you wholeheartedly we have problems, I would take issue with some of the union wage demands, although you people have set a much better example than management in Detroit over the last 5 years. They won concessions out of you on wage demands in 1982; then we negotiated restraints on Japanese imports, and they raised their prices, coming in with the biggest profit year in the history of the industry in 1983. And what do they do? They promptly reward themselves with those magnificent bonuses for the good boys they have been in 1984.

It seems we have a lot of soul searching to do all the way around, and I think government plays a role. I happen to be one of those who consistently has opposed CAFE standards as absurdities. These are consumer decisions. If I want to burn gasoline, I will pay the cost. Inflicting these kinds of guidelines on the auto industry has created special problems for them too.

My concern is in this area of competitiveness, and I think we have a long way to go. I saw a report recently, I think it was in U.S. News, that the labor component of the Japanese car is about $80 to $100 whereas the labor component of an American-made car is about $150 to $160. Does that correspond to your understanding of the percentage of labor that goes into auto construction?

Mr. Bieber. Well, first of all, Congressman, it is a question of how you measure it. If you measure apples to apples, or if you throw in a few potatoes—I did not want to say oranges because those are fancy, as the chairman well knows—but in any event, it depends on how you measure it. The Japanese, in some of those figures that you see, do not include some of the hours of component production that obviously we do in the United States. And you will get a different figure even if you compare Ford and Chrysler and to General Motors, because you have varying degrees of vertical integration in those companies.

So, I do not think that if you put it on a straight line and you measure it apples to apples, that you are going to find that much of a disparity in those figures.

If I might, Congressman, let me make just one other point about what you said earlier about manufacturing. The figures that you relate to are in past tense, and I do not argue with some of them at least. But I think the point has to be made that we are losing manufacturing capacity now. And that is true in industry after industry. Our U.S. production is losing market share, and the future, unfortunately, does not look as promising as those figures indicate for the past. We understand that employment per unit of output will decline, but we must keep high productivity manufacturing in this country just as we have kept agriculture production here, as agricultural productivity grew.

You make mention of the number of jobs that we have created. I think what we all have to keep an eye on is that we have lost a tremendous number of jobs in basic industry. The jobs we have lost are high paying jobs. Unfortunately, a lot of those jobs that are included in the number of new jobs are very low-paying jobs. The point I am making is, if we continue that kind of a trade off, we lose our purchasing power, and our ability to have a high standard of living.

I do not think anyone can successfully argue that if our economy is based on services—as opposed to an industrial base—we are going to lose substantially in our standard of living.

Mr. CRANE. Thank you, sir, for your testimony.

Chairman GIBBONS. Mr. Jenkins?

Mr. JENKINS. Thank you, Mr. Chairman. Thank you for your testimony. I know that Mr. Pease will want to talk some about workers' rights, so I am not going to talk about that area for a moment. You mentioned in your statement that it appears that any time any group or Member attempts to take any action to try to salvage some of the U.S. marketplace for domestic industry, we are bombarded with that phrase "protectionist."

I was very interested in what you were saying about Latin America. Our policy is to try to increase their exports and to decrease their imports so that they may make their interest payment to the banks who have made loans. I have stayed away from that area somewhat until just in the last month or two. I commenced to look into these think-tanks and all of the various groups that tag everyone with the name "protectionist." And it is amazing to me how many of those are financed by banks.

I am now in the process of trying to compile the financing of some of these groups. Do you have any information that might shorten my time, because I have been very helpful to the banks in the past, but I am looking into that matter. Then I want to go into the law firms that are representing the various groups. So, if you have any information I will be delighted to receive that.

Mr. BIEBER. Congressman, we will be very happy to make information that we have available to you.

Mr. JENKINS. I am just getting a little tired myself of having all of these great intellectuals out there that control the editorial boards and all of the various groups, tag me consistently as a "protectionist." I suddenly find they are being financed by all of these other groups. So I intend to look into it. I am just a country lawyer, but I intend to take a look at it if I am going to receive the flack.

Mr. BIEBER. Well, and I say to many of my colleagues in the labor movement that I am just a country boy myself—I spent my growing up years on the farm. I agree with you, Mr. Congressman, I too get very tired of that label. But on the other hand, I have more recently said, if you want to label me a protectionist because I want to protect the future of America, because I want to see an America for my children and grandchildren, and yours as well, that gives them the same opportunity that I had, if that is what protectionist means, then, put it in broad letters, because that is what I am concerned about.

I am not interested either in building a fence around our country, and I recognize that we need to have trade with the rest of the world, but if I have to be labeled a protectionist because I want that to be at least half-way fair, then so be it. That is my argument, and I think you probably looked at my prepared testimony on page 9, I could not resist making the point here that sometimes it is interesting to know when protectionism is a proper route to follow, or a proper term to use. And I guess I have a feeling that some of our trade at least with our South American trading partners smacks a little bit of protectionism for the bank industry in the decisions that have been made there.

And I said earlier, I am not here to mash the banking industry either, but we need some fair play. I do not know how you feel, Mr. Congressman. I know that you have gotten labeled with that a few times too, but I am willing to keep on fighting for that future for America.

Mr. JENKINS. I intend to do that. I just thought I would do a little investigating of my own, and I thought that if you had any information you might give it to me.

Mr. BIEBER. We will be happy to join you.

Mr. JENKINS. Thank you.

Mr. PEASE. Mr. Chairman, I thank you very much, and welcome Mr. Bieber. I must admit to a little apprehension about following a member who just described himself as just a country lawyer, and addressing a witness—back in the Ohio Legislature I learned that when somebody on the appropriations committee described himself as just a country boy, one ought to hang onto the wallet as tightly as one could.

Let me, first of all, commend you for your continued support of the worker rights language in H.R. 3. I would just like to point out for the record and for our guests in the audience, that the support of the UAW for worker rights language is entirely consistent with the history of the UAW. Among, I think, all of the unions of the United States, the UAW has, for 50 years, shown a concern far beyond its own membership to society as a whole.

And, in this case, we are looking in this language to the living standards and working standards of people all over the world. And, it is not a narrow parochial interest on our part. Certainly, we would like to avoid competition from people who are paid extremely low wages, but at the same time, the basic argument for the worker rights language is that it helps the working standards and living standards of people around the world. I really want to thank you for your very strong support of that provision.

I guess I would like to concentrate on South Korea for a moment, because it appears that every auto manufacturer in America is rushing over to South Korea to set up operations, and that the South Koreans, with that Hyundai car, are entering the U.S. market in a big way.

I am not sure what autoworkers are paid in South Korea, but I would imagine it is around a buck an hour, or something in that neighborhood.

Mr. BIEBER. A little over that, but very little.

Mr. PEASE. OK, we can comment on that. The thing that interests me about our worker rights language, is that it seeks to tell the workers of South Korea, and other countries, you can do what comes naturally. You can organize, you can form unions, you can petition for higher wages and better working conditions and all the rest, but if Walter Reuther were alive today and in South Korea trying to do that, he would be thrown in jail. He would not have an opportunity to do what he and other distinguished successors, including yourself, have done in the American industry. And that is why the worker rights language that you support and I support is so important. It does not set automatic minimum wages for South Korea or any other country, but what it does is to say that those South Korea workers do have the right to organize, and they do have the right not to be thrown in jail for trying to better the working conditions and the wages of their workers.

Let me ask you now about the voluntary restraints that have been in effect for a number of years. They were designed to give some breathing room to the U.S. auto industry. The auto industry has had about 5 or 6 years now breathing room because of that. Do you feel that the American automobile manufacturers have used that breathing room wisely and well, in order to become more competitive?

Mr. BIEBER. Well, let me answer your question in this respect: No. 1, at the time that the original voluntary restraints were put in place, we were in the process of, quite frankly, redesigning a fleet of automobiles. And one of the voids at that time, and it is still a void so far as domestic production, is the whole question of a small car, subcompact cars.

The answer to your question, do I believe that the American domestic manufacturers used that time well, or have they pursued that goal, has to be no, in broad terms, because when you look at the real world today and you look at the small car, the domestic manufacturers have really ceded that piece of the industry to foreign production. And not only to foreign nameplates, but what is happening is, these are their own captive imports that we talk about.

General Motors is going to bring us another 100,000 cars this year from Korea. It will not be from Hyundai, it will be from Daiwoo, whom GM has a 50-percent interest in. And I might say, Mr. Pease, if I can just use this point, you made the point if Walter Reuther was living today, and he tried to exercise the right of organization of workers and the right of workers to sit down at the collective-bargaining table, he would be thrown in jail.

You do not have to get to the role of a Walter Reuther, because in April of 1985 there was a strike in the Daiwoo plant in South Korea. My memory is that it lasted 9 or 11 days. It was what was termed a wildcat strike, which merely meant that the conditions got so intolerable that the workers on the floor would no longer live with them, and the strike took place. There were 11 young members of the union in that plant who were deemed to be the leaders of that strike. It is interesting that they did not fire them, or take action against them at that point. They waited until the workers were back producing again, and then they took these 11 people to task, and Congressman, their fate was they got 2 years imprisonment for exercising those rights of freedom.

So, the last semblance of a small car that we are hanging onto here is a car that has yet to be produced—the Saturn project in Tennessee. And I must say to you, Mr. Congressman, there are not many blocks even laid their yet. It is a long way in the making. It is one of the problems.

And the other problem is, and I have noted with interest, the Hyundai invasion of our market is phenomenal. The percentage is amazing that they picked up in the first year. But it is also amazing to see, in an article that I read yesterday, that immediately they are now talking about bringing a bigger car. And that is where our industry has had the blinders on. I said in 1981, if anyone is ridiculous enough to assume that you can pare out a piece of that market, which is the low profit margin of that market, and say well we will give that to the Japanese or the Koreans or anyone else and they are going to be satisfied, that is pretty unrealistic.

And that is now what is happening to us. Now, the Japanese are coming up-scale, and they are going to become more and more competitors on the top part of our market. There is plenty of blame to go around for some of the decision of the domestic auto companies. Now, in fairness, in the case of Chrysler, as you know, I do sit on the Chrysler board. I can tell you I voted against the joint venture, but the argument was made there that the policies that we were following were going to lead us to this very point where we are today, that the unrealistic position of the dollar had made it impossible to continue to produce that care here.

I am not sure that I agree with all of that argument, but certainly it had a tremendous effect upon it. That is part of the whole reason why we really have to begin to sit down together, labor-management-government, and plan what we can do and how we do these things.

I just want to take a moment to say to the whole panel and to say to the whole world again: I am not afraid of competition, fair competition. Define for me who that competition is, what we have to do. But do not give me that rolling target that I am confronted with everyday. When the people whom I represent sat down in good faith with the American auto companies, we were called on to reduce cost, and I can give you figures that are unbelievable—$60 a unit—and I am not talking about a car, I am talking about a small piece that goes into that car, and then wake up 48 hours later and find out that that same company has now taken all this technology that you helped them to assemble, taken the know-how, which no other competitor would have, pick it up and move it overseas, and 48 hours later you have got a new competitor. Who is that competitor? It is part of that same multinational company.

The workers that I represent or anyone cannot win against that kind of competition. Pitted against wages in Korea, the average wage for an autoplant over there—I think it is at Daiwoo—is $1.54, for an assembler its $1.94. Hang on to your hat, the benefits are about $1.99 added to that. So you add it up, you are talking about less than $5 an hour.

Now, we cannot possibly do it, but if every autoworker in the United States agreed tomorrow to work for $5 an hour, we would be back very shortly where we were in 1929 and 1930. And we all know that. So, it is ridiculous.

The other piece that you pointed out is, that unless you allow the workers the freedom, first of all to have decent working standards, that their health is protected, and the right to sit down and collectively bargain, to increase their purchasing power you are never going to develop a domestic market there.

Today, for a Korean worker—the average hourly wage is $1.20. But take that autoworker. It is going to take that Korean worker four and one half times longer to make enough money to buy the product that he produces as compared to an American worker. Now, if you do not develop that domestic industry with decent wages, and you continue to increase the productivity of that industry, where is it going to go.

It has to come to the only lucrative market in the world, and that is the U.S. market. I do not mind sharing some. I want some fairness in it, but somebody better wake up to the fact that if we keep on going the way we are, we are going to destroy this market in the process.

And that certainly does not help anyone. It certainly does not help the American worker, America as a whole, and it does not help that foreign worker either in the long run.

Mr. PEASE. Thank you very much.

Chairman GIBBONS. Mr. Guarini.

Mr. GUARINI. Again welcome, Mr. Bieber. It is good to see you again, and your support for trade reform is most welcome and most important. It is a very frustrating subject matter because when we went along and put pressures on Japan for voluntary imports it benefitted them in many ways. They came in with bigger cars, and the cars sell the premiums. Of course, the American car manufacturers have pointed out that it did not help any because all they did was raise the price of their cars and gave themselves big bonuses in the executive department.

And then, of course, we went along with joint ventures, having cars built here with Japan. As you pointed out, the choice part of the business went to Japan. Now, what it gets down to is that no matter what we do in negotiating, or no matter what we do in passing laws, as long as the attitude of Japan is as it is, and the spirit of our fair trade is not adhered to, they can get around anything.

So, the laws we passed or do pass may not be sufficient if they do not have the proper attitude or spirit in following through a system of fair trade with the United States. They can get around anything that they do.

Mr. BIEBER. Well, I suppose one can make that argument. I think the other half of that argument is this: What I think we have to do as a government, we have to say to Japan and to our other trading partners, enough is enough. And we have to say to them you have to come up to this table and we have to agree to some reasonable fair rules of trade.

But I would suggest to you, Mr. Congressman, that I think that I can understand why that has not happened, because we have never sent out a clear signal. We tend to say one thing—but if I might just for a moment go back to the VRA piece of it. We wanted commitments when the VRA came into domestic production as part of the restraint process, but the problem was that the companies and the administration refused to agree to them.

And we say things but we send wrong signals. I think we have to say, look, this is it. Now, we insist that you do something about this unfair trade practice. Now, every time a new session of Congress begins, and the newspapers carry a lot of articles about what Congress is going to do, a new trade bill and that, it is amazing to see how all of a sudden you get some movement.

Now how deep it is going to be and how long is questionable. But I must say that if I placed myself in other peoples' positions on the other side of that argument, unless I truly believe, that we are going to do something, that we are going to say in a clear voice, we are not going to let our market be destroyed, we are not going to let our system be destroyed. People are not going to be motivated to move. Let me give you one other example.

Mr. GUARINI. What should we do other than articulate the problem? There has to be some positive forward action, rather than just talking, because talking to these people apparently does not do any good. We have been talking for decades for now.

Mr. BIEBER. Well, excepting—I think talking does do some good if they know that you mean what you are saying. Let me give you a couple of examples.

No. 1: if you look at the European situation, over the years, if you take a look at the intrusion into that market by the Japanese you are going to find that it has floated, but it has stayed pretty much at 11 or 12 percent. You will see the thing go up and then what happens is somebody knocks on the door and reminds people what they will tolerate and what they will not. And you will see it go down, and at the same time you will see the boats veer and come to our shores.

Let me give you another example. I have pointed out the transplant problem. It is interesting to note that when Nissan went to Great Britain, they quickly agreed that the content of their cars produced in Great Britain would be 80-percent European content in a very short period of time.

But we do not get that kind of a tradeoff here in America, simply because they do not think we are going to do anything about it. And so, I think that H.R. 3 does say, in very strong terms, we are not going to tolerate the balance of the scale like this. But it also says it in a form which I think is fair. It does not say that you cannot ship this or you cannot ship that, it says strike a balance here. Open up your markets, do something, so we balance this thing off. And that is why I think that if we, at this point, do anything other than vigorously support those sections in H.R. 3—and I talk about the Gephardt amendment particularly, and also about Mr. Pease's amendment because I think that is equally important, if we stick to our guns now and really say to the rest of the world, we mean it, I think we will see some movement. If we do not, we are going to see what exactly has been happening.

Mr. Guarini. Assuming that we do, all of H.R. 3, still that does not make America more competitive. That might create fair trade, but we have to have the American automobile manufacturers being able to make better products, better technology, and be able to be smarter than our competitors. Now, nothing has been said about that, and I do not see the automobile manufacturers even moving in that direction. In fact, they are moving in the direction of larger cars, which is going to give us more of an energy problem later on. The whole national policy toward automobiles and energy seems to be all wrong. It is going in reverse and it is counterproductive.

Mr. Bieber. Well, I would want to point this out. I think we have done a good job in moving to the target of being competitive in the automotive industry. I gave you some productivity rates before which I think reflect that. And I will say this to you, I am very proud of the fact our union has been a union that has taken an innovative approach. I could take you into plant after plant and show you the productivity increase that has taken place.

And I do not say this to be facetious, but I really wish that you would bring a hearing such as this out to Detroit, Mich. I wish that we could take some of you, and I really mean this, and show you some of the things that we have done in the American auto industry. We have made tremendous inroads.

For a while we were battling a very much overinflated dollar that made it impossible. Move out of the car plants for a moment and go into heavy industry. In Caterpillar we had a situation where you build a big piece of equipment, where simply because of the imbalance between the dollar and the yen, you end up with a $65,000 price differential. Everything else being equal. You cannot do much about that.

Well, some things have happened at least to cushion that a little bit. The other piece of it is, and I want to point out that we have done a lot of things, we have become more competitive, but we are also building a very high quality car in America. And I think that people ought to look at the fact that our auto companies now have warranties out here that talk in terms of 7 years and 70,000 miles, 6 years and 60,000 miles, and there is not one foreign competitor that has anything like that going.

So I think we have a good product. I think we have become very competitive. I point out again—if you are asking me, can the people I represent compete against $1.20 or $1.90 per hour or $5 a day in Mexico, no. But I do not think that is a level playing field or a fair playing field either. But let us do some things about making that trade field fair, and I will tell you this: we will not back away from fair competition on the question of competitiveness. I have said over and over, and I will say it this morning: The American worker, totally, can compete with anybody in the world, and is willing to do that if we have a fair set of rules in which we can compete.

Mr. Guarini. I share with you the faith in the American worker, but I feel very concerned—as the old saying, the proof of the pudding is in the eating. People in America want and seem to prefer to buy foreign cars, and there must be a reason for that, and we have got to be smarter and be more competitive than we have been in the past, and I do not see too much happening in that direction.

The price of cars is getting prohibitive. It is extremely high, and that the technology that we have does not surpass, from what I can understand, the preference that people have for Japanese and German cars.

Mr. **Bieber**. Well, let me say this, Congressman, we have moved quickly over a short period of time to redesign an entire fleet of cars. We have state-of-the-art plants. I have also visited plants in Japan, and I just say to you, I have not seen anything over there that we do not have. As a matter of fact, some of the equipment over there I saw in American plants long before I went to Japan.

We have done a great deal. Granted, the American public has a taste for large cars, and while that preference is there, someone is going to fill that void, and I would only point out that the foreign importers are now trying to move very quickly to that higher rung as well. I think that all of you know, at least that you read now and then, some of my statements. I certainly share what was said earlier about some of the excessive bonuses that are paid out.

I think that there are going to be some announcements that I hope never comes about. I have a bad feeling that they will. I think it is terrible. I think that our companies, maybe all of us, have to begin to look at how you measure success in a different fashion. American companies have tended to look at short-term results as opposed to long-term results. And that is a problem that we have because we are competing against Japanese auto companies who do look long-term much more than our companies do.

But on the price of the car, Congressman, I can also point out that there are many models out there where if you look at the equipment that is on that car, today as opposed to 10 years ago, that the price increase has been very minimal. Now, it is a question of how much becomes standard equipment and how much is not standard equipment, and measure against a car 10 years ago, there are many more pieces of standard equipment today. But I mean in relationship, the price has not risen that much.

The other problem we have, quite frankly, is that the Japanese companies recognize the importance of that piece of the American market they have, and when you look at the appreciation of the yen, and look at how much they have increased the price of their product, there is a big gap there too. They just have not passed it on. Now how long you can play that game I do not know.

Mr. **Guarini**. They have been holding onto their share of the market?

Mr. **Bieber**. That is right, and they are paying for it in profits.

Mr. **Guarini**. Thank you.

Chairman **Gibbons**. Before I go to Mr. Levin, although he is not a member of this subcommittee, but is one of our most faithful attenders——

Mr. **Bieber**. He is also my Congressman.

Chairman **Gibbons**. Well, I knew he was going to be here. He has let me know that. I was in Europe this fall talking to our partners over there about the upcoming trade negotiations, and I asked them if they were ready to lay on the table discussions concerning trade and automobiles. And while we do not direct much of our attention toward Europe, it all seems to be getting off on Japan, I was discouraged to learn that the European Community did not have a mandate from its member states to discuss automobile trade.

I want to serve notice on the Europeans, that one of the preconditions of us bargaining with them on all things is going to be a discussion of their ability to bargain in automobiles as well as in every other industrial goods and services.

They seem to lie smugly in isolation over there, while we take out all of our frustration on Japan, and I tried to convey to them, as best as this little old country fellow could, our interest in automobile trade. And I hope that they will take due notice of it, that we expect to include automobile trade as a part of our bargaining.

I want to say too that the people of France are building a museum to remember and commemorate the lessons of the Battle of Normandy, which happens to be the largest battle ever having been fought on Earth, and probably one of the most important battles. And American industry and American labor have been invited to participate and to tell their stories of how America mobilized.

I cannot think of any group of people who played a greater role in the success of the battle of Normandy than the United Automobile Workers.

Mr. BIEBER. I do not either.

Chairman GIBBONS. From aircraft to tanks to ammunition and everything else. I want to make sure that you know, and I will help get the information to you about what perhaps could be done to explain to the world what took place during those miraculous days when American converted from a high unemployment, peace time, economy, to a tremendously industrial supply base for not only the U.S. Army, but Air Force, Navy, and Marines, but for the whole world. I remember when I finally ran into the Russians in Austria, they were driving American trucks, made and assembled in Detroit.

Mr. BIEBER. That's right. I appreciate your raising that because I ask my people to make a note of it, and in addition to my position as president of the United Auto Workers, I am also president of the World Auto Council of the International Metalworkers Federation, and I will contact—and the secretary-treasurer of that federation who happens to be a member of my union—Herman Rebhan from General Motors Local 719 in Chicago. And I will contact them on this matter as well. I certainly want to be able to make a pitch to include the importance of the American auto industry in that.

Chairman GIBBONS. Mr. Levin has involved me in his very important effort of trying to get equal access to the parts end of your operation. Sander, why do not you take over?

Mr. LEVIN. Thank you very much, Mr. Chairman. Marcy Kaptur and Nancy Johnson and myself and others deeply appreciate your involvement in this effort. The MOSS talks, as we all know, are going on right today. Today is the last day of this round and we are anxious to see the results.

Let me ask you, if you would, to give us some idea of the priorities you place on the various proposals. Not in a rigid way, but if you had to rank the proposals, your own suggestions in order of importance, which would come first, second, third? Where do you put the emphasis?

Mr. BIEBER. I am not sure, Senator.

Mr. LEVIN. In terms of changing the laws, what is most important in your judgment for us to do?

Mr. BIEBER. Well, I said earlier that I feel very strongly that H.R. 3 is a vehicle that can be a very important piece of legislation to start turning these things around. The Gephardt amendment, the trade deficit reduction piece of it is extremely important, and I cannot think of any more fair approach to trying to resolve that problem, because what we are saying is not stop sending us this, or stop sending us that. We are just saying there has to be some fair method in which we begin to more properly balance this scale between ourselves and our trading partners.

The workers' rights piece of that legislation is extremely important. First of all, from a moral standpoint, it is just unfair to subject workers in any part of the world to some of the conditions that workers in countries that are our trading partners are subjected to. Certainly South Korean is one of them. And it is unfair to ask the American workers to compete against products produced under those conditions.

The other piece of it is, as I said earlier, they do not develop domestic markets when people are forced to work under those conditions—when they are denied the right freely to sit down and collectively bargain to raise their wages, which makes it possible for them to become a customer in their own market.

I think this piece of legislation, if signed into law, would go a long way to start correcting the problems that we face.

We have to do some things, I think, within our own industry. Another piece that I would like to see done, should have been done yesterday, but we certainly ought to get on with it today. That is, and I will not even use the title that I have normally placed on it—we have talked about an industrial policy for the country. If that is a problem, let us call it a policy for the future of America.

But let us sit down, let us, labor, and industry, and government, sit down and look at what our problems are, but also what kind of a country do we want in the future, how do we intend to continue the greatness of America. Together we can find those answers, I believe.

We have found a lot of answers to problems in the auto industry. It hasn't been easy. It has been tough. We have had to do some things that we as workers did not particularly put as our number one priority, but we did them.

I do not think that we have gotten a fair tradeoff in many instances, but I also have to tell you that I can not resolve all of these problems that we face, sitting down with Ford or General Motors or Chrysler, even if I got them all to the table at one time.

There are some things that government has to play a role in, and we have to have some help on. I think we are just going to be looked upon—when history is finally written—our children, our grandchildren probably are going to say some pretty tough things about us for what we did not do.

I hope and I think we still have the time to do it, but I think we have to get on with it.

Mr. LEVIN. I agree with you on that, in terms of what we have not done. I asked you the question because one way to frame the issue that faces us, the chairman of the subcommittee, the full committee, both sides of the aisle, is how far beyond amendments to 301 and 201 we should go, and how much we should set some kinds of objectives and targets.

I take it you are not cemented in stone on the exact language of how we might set some objectives. That I see as the thrust of the Gephardt amendment, with some mandatory action if those objective are not met. I personally think that we have to do that.

My time is running up. I appreciate the chance for some give and take, and join others in welcoming you. Let me close—I do not know if the issue of foreign trade zones came up, Mr. Chairman, in the discussion so far. That issue has arisen——

Chairman GIBBONS. I did not hear.

Mr. LEVIN. Foreign trade zones. It has arisen in our discussions on auto parts. You may have mixed feelings about it, but I would appreciate it if you would give us some other time, not this morning, your views about the operation of foreign trade zones in America under present legislation, because we are beginning to look hard at that aspect of our present law.

Chairman GIBBONS. I would be happy to do that.

Mr. LEVIN. Thank you very much.

Chairman GIBBONS. Thank you, sir.

Do you or John have questions?

Mr. BIEBER. Thank you, Mr. Chairman, and I thank the committee. I appreciate very much the time that you have given me to give you our insight of this problem, and I mean it sincerely when I say what we are looking for is an answer to the future of America, and we ought to all get on with doing that.

Chairman GIBBONS. Thank you, sir.

Mr. Dick Armey is our next witness, a Member of Congress from Texas.

Mr. Armey, before you came in, I announced that all statements would be included in full and that we would appreciate your summarizing your statement.

STATEMENT OF HON. DICK ARMEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. ARMEY. Thank you, Mr. Chairman. I appreciate being asked to give this testimony. I will summarize my testimony, but first let me say it is a privilege to appear before this distinguished subcommittee.

As you know, Mr. Chairman, in my life before Congress, I was a professional economist, and a disciple of Adam Smith. As a professional economist, I'm aware that Adam Smith wrote the "Wealth of Nations" and invented the discipline of economics while he taught the fundamental lessons of the folly of protectionist policies during mercantilist Britain. I have always searched in this whole question of the relationship between government and the market, or government and the private sector, for a definition of the public interest.

I suppose I found my definition in "The Wealth of Nations," where Adam Smith said, consumption is the sole end and purpose of all economic activity, and to the extent that the government should intervene in the affairs of the economy, it should do so on behalf of the consumer.

I take that as my point of departure in trying to devise a public policy in the public interest.

As an academic, I was free to be simply against protectionism. And I am still against protectionism, because I think it hurts, I think it hurts us more than it hurts our trading partners, the most dramatic lesson being Smoot-Hawley.

But as a Member of Congress I recognize that you can not be against something unless you have a better alternative to offer.

It is for that reason that I formulated and chair the Trade Expansion Caucus. The fact is that semantics play a role in the trade debate. When I say I am for free trade, I am aware that it is understood by some people as a statement that I am for a do-nothing policy. That is not the case.

I think it is clear to all of us that we can not have a do-nothing policy, so I now characterize myself as being a trade expander.

I have to tell you I was very excited and gratified last Tuesday morning to pick up "U.S.A. Today" and see both the President of the United States and the Speaker of the House endorsing the trade expansion policy. They both made the point that our job is to expand trade, not restrict it.

I do not see our trade problem as a problem of us importing too much. It is more a problem of our exporting too little. I would like to see expanding exports addressed, to the betterment of all our trading problems.

In that case I have some recommendations regarding what should be done, beginning with some umbrella suggestions. The Congressional Budget Office issued a very comprehensive study that, I think, clearly demonstrates that our chronic domestic budget deficits are the primary cause of our chronic trade deficits. I believe that if we are to enact lasting trade reform, we must begin with controlling domestic deficit.

It is for that reason that I take a firm position that we should adhere to the Gramm-Rudman $108 billion target as a goal to be achieved for fiscal year 1988.

We also have to establish a sound monetary policy. We see a good deal of progress here. A word of caution, even though I believe the effort to adjust our exchange rates downward is a good effort, I believe there are potential risks there, too. If we go too far with that effort, we could create a domestic inflationary pressures which could be counterproductive.

Regulatory reform is extremely important, and something that I will talk about in mere detail in a moment.

In education, I think we ought to be very careful to look toward basic education, especially focusing on mathematical and analytical skills. I once had somebody tell me that in the United States we graduate seven lawyers for every engineer, and in Japan they graduate seven engineers for every lawyer. If you operate on the principle you use what you have, the Japanese would then use their engineers to solve problems while the lawyers would use their expertise to shift them around. I do not know how much truth there is in this, but I think we really need to focus on engineering, mathematics, and technical skills that make a direct contribution to the physical processes of producing goods.

With these kinds of umbrella recommendations, I would like to tell you very briefly what the Trade Expansion Act includes.

We are taking the approach that our greatest contribution in the public interest would be for the Government of the United States to revise certain laws on the books that inhibit the competitive spirit of American enterprise and diminish the ability to expand.

We need to combine, then, a freeing of our entrepreneurial capacity with assertive efforts to open trade opportunities. In that regard, my bill suggests the reform of antitrust laws, especially the Clayton Acts. As we implement those laws, we often foreclose opportunities for domestic business to become internationally competitive, we should also remove export restrictions on oil and timber products, establish a security short supply list, freeing nonnational security exports from export restrictions, revise the Foreign Corrupt Practices Act, expand GATT authority, and grant new negotiating authority to the U.S. Trade Representative.

One of our finest hours which I had the chance to intimately observe as a young professional economist was the Kennedy round of the GATT. This was a fine example where we really took a leadership role here, and in the right direction. I think we should try to recapture and eumulate that kind of an effort.

We also need to protect the intellectual integrity of American property rights and look toward the establishment of free trade areas with countries that agree to open their markets.

One of the things that I am always fascinated with in my conversations with colleagues is the argument that we ought to set a good example for the Soviets with respect to nuclear disarmament. Some argue that if we begin the disarmament process, we will set a good example for the Soviets to follow.

I might turn around and suggest the same thing in trade, that if we take an assertive role to reduce our tariffs and our barriers, and other nations see us prosper, they will follow. Oftentimes, though, this argument is rejected by a person who might advance it on the other side.

In any event, rather than taking a punitive, confrontational point of view in negotiations with other nations, I really think we ought to explore cooperative efforts to open up trade opportunities. In that regard, I think we have to understand America is not without its own trade restrictions. The dialog often pretends that we do not have any trade barriers, but the fact is we have history of erecting trade barriers.

My final point, a point that was raised, I thought, very well yesterday in the Washington Post in an editorial by Robert Samuelson, is that if you look at the current agenda of this Congress, we see several pieces of legislation that threaten to actually diminish our competitive ability further.

Our job is on the one hand to try to lift restrictions imposed by our own Government, but also refrain from adding further. Some examples Samuelson cited were the current effort to impose parental leave options, raising the minimum wage, and attempts to raise farmers' profits by restricting crop size.

One of the points that Mr. Samuelson made is these kinds of efforts not only interfere with the ability of a firm to be competitive, but they threaten a rebirth of inflation. Now I cannot think of anything that could more damage our competitive ability in international markets than a rebirth of inflation. So I think we need to be very careful about Government mandated benefits, recognizing the inflationary pressure that can be brought to our domestic economy from these kinds of policy initiatives. We need to be removing restrictions on American firms imposed by the U.S. Government, not imposing new ones. We need to seize and give leadership to open world trade opportunities to the benefit of all nations, and take the strength and the success of the American economy, which, in the last 10 years, has created 25 million net new jobs while the Europeans have created none, and turn all that to strength in an assertive effort to expand the world economy and America's role within the world economy.

That I offer as an alternative to engaging in protectionist policies, contracting us into fortress America. I always like to remind people we can protect our domestic markets from foreign intrusion, but by so doing we would so thoroughly insulate our domestic producers from rising to the occasion of international competitiveness that we would in effect surrender the world market to those who choose to exercise in that market.

I think we need to take faith in ourselves, our entrepreneurial ability, the spirit of workmanship in our labor force, and show the world that we can outcompete anybody if our Government will simply get out of our way.

I thank you.

[The prepared statement follows:]

STATEMENT OF THE HONORABLE DICK ARMEY

BEFORE THE SUBCOMMITTEE ON TRADE OF THE HOUSE WAYS AND MEANS COMMITTEE

FEBRUARY 26, 1987

Mr. Chairman, I appreciate the opportunity to appear before you this morning to discuss our nation's trade problems. As an economist and a Congressman, I hope I can offer a perspective on trade and suggestions which reflect both economic and political sensitivity.

Whether we recognize it or not, our economy is becoming an increasingly global one. It's not enough to be competitive at home, economic survival today is measured by a firm's ability to compete against domestic and foreign manufacturers and service providers.

Who benefits from this global competition? We all do, though at times we have to wade through some persuasive and pervasive myths to get the whole picture. For instance, you'll rarely find an advocate of restrictive trade policies argue that international trade hurts consumers. Adopt that approach and you'll find yourself arguing that American consumers don't know how to spend their own money. More often than not, though, you'll hear that America's manufacturing base is eroding and that American jobs are threatened by global competition.

The facts just don't support the charge. Manufacturing as a percentage of GNP has remained relatively constant at 20 percent over the last 25 years. And while manufacturing employment has dropped from approximately 25% of the workforce to 18%, it's pretty clear that the productivity of manufacturing employees has increased and it now takes less people to make more goods. That's responding to international challenges, not putting up barriers to inhibit global competitiveness.

And what about the charge that American jobs are being lost. Today, we have more people working than ever before. In relative terms -- comparing America with other economies -- the results are even more startling. Since 1975, the American economy has created 25 million net new jobs. In the same period, all of Europe created 0.

So, to those who would say that protectionist trade policies are needed to "protect" jobs and American consumers from foreign competition, I'd respond -- as would most economists regardless of their political persuasion -- it's American business and consumers who'll pay the bill for the folly of protectionism.

While I don't believe in the myth of a deindustrializing America, I'm concerned about declining productivity growth, rising labor costs, a deplorably low savings rate, stagnant or declining R & D expenditures and our large trade imbalance. To say the least, these are symptoms of an economy in adjustment. A more alarming indictment, but perhaps more deserved, is that these economic ills are characteristics of an overregulated economy or a product of incoherent and irrational government fiscal and monetary policies.

For economists, this description of our "competitiveness crisis" may be fine and good. In human terms, though, we need to translate the debate over competitiveness --what it is and how we go about solving the problem -- into a way to (1) Increase the standard of living (2) Increase consumer choices and (3) Increase employment and employment opportunity.

The economist in me realizes that America's lack of competitiveness in some areas is endemic in any economy. The Hecksher-Ohlin theory tells us countries will naturally gravitate to produce those items which reflect a particular country's natural resources. In a more general sense, the basic tenet of comparitive advantage holds that a country will produce those things which it makes most efficiently. Thus, it's perfectly natural, especially in a dynamic, changing economy, to be uncompetitive in certain areas.

Yet, I'm also sensitive to the emotional and financial hardships presented by worker dislocation. But our response to these problems must resist the inclination to inhibit economic change. It is the dynamism of the American economy which has made us the world's foremost economic power and keeps our standard of living improving.

If we're going to engage in protectionism to to protect jobs, it's important to quantify the cost to consumers for every manufacturing job saved. I've seen estimates that the textile bill which passed the House last year would cost consumers between $70,000 and $140,000 per textile job saved, not to mention jobs lost in retailing.

ROLE OF THE FEDERAL GOVERNMENT: WHAT THE FEDERAL CAN AND SHOULD DO

The federal government does have a role to play in creating an economic environment in which business can flourish. Without creating a host of special give away programs or tax incentives, the federal government can and should:

ELIMINATE FEDERAL BUDGET DEFICITS

Getting spending under control is one of the most important things we can do. Financing $200 billion deficits and servicing a $2 trillion national debt raises real interest rates (in relative terms to other currencies), attracts foreign investment and causes the appreciation of the dollar making it more difficult for American firms to compete internationally. While the recent managed fall of the dollar has helped this situation somewhat, managed currency fluctuations don't provide the stable monetary climate that maximizes international exchanges. In general, though, I don't think there is any question that a dollar spent by private individuals will produce more real wealth than a dollar borrowed and spent by the federal government. Government is just not as efficient as the private sector is in allocating scarce resources among competing alternative uses.

ESTABLISH AND ADHERE TO A SOUND MONETARY POLICY

Whether this means fixed exchange rates, commodity backed money, or monetary growth targets which are strictly adhered to, we must end consumer and business uncertainty over the relative value of the dollar.

CREATE A TAX ENVIRONMENT WHICH PROMOTES SAVINGS, RESEARCH AND DEVELOPMENT, AND ENHANCES PRODUCTIVITY

We took a step toward a better tax system with the adoption of tax reform. Without raising rates, we can restore some of the incentives eliminated. By expanding the IRA concept to other areas -- education, housing, health care -- we can promote self reliance and create new sources of long term investment capital. An targeted Investment Tax Credit could be restored to promote productivity enhancing investment in machinery and equipment.

REGULATORY REFORM

Earlier efforts to reduce the regulatory burden on business were partially successful, but we're backsliding without an on-going effort to eliminate costly over-regulation. As the Chairman of the House Republican Research Committee's Task Force on Regulatory Reform, I'm anxious to resume our vigorous effort to eliminate costly, counterproductive, and burdensome federal regulations.

EDUCATION

We need to stress a return to basics in education. Math and writing skills should be stressed, much as they are in countries (like Japan) with faster rates of productivity growth.

TRADE EXPANSION IS THE BEST COURSE FOR EVERYONE

For many, the competitiveness crisis is best exemplified by our tremendous trade imbalance. While many disagree on a comprehensive trade enhancement strategy, most can come together behind the trade expansion theme. In fact, in Tuesday's USA Today President Reagan and Speaker Wright both expressed an interest in expanding trade opportunities rather than closing our markets to foreign goods.

As I did last year, I'm again going to introduce the Trade Expansion Act. At the heart of the Act are initiatives designed to break down competitive barriers which our own federal government imposes. The components of the Trade Expansion Act are:

/ Reform anti-trust laws

/ Remove export restrictions on oil and timber products

/ Establish a "security short list," freeing non-national security exports from export restrictions

/ Revise the Foreign Corrupt Practices Act

/ Expanded GATT authority/New negotiating authority to U.S. Trade Representative

/ Protect intellectual property rights of U.S. business.

/ Establish a "Free Trade Areas" with countries which agree to open their markets

THE DEMOCRATS AGENDA IS ANTI-COMPETITIVE

While I've just enumerated a number of government impediments which could be removed to enhance our competitiveness, Robert Samuelson in yesterday's Washington Post argues that the Congressional agenda set by the Democrats is chock full of costly, anti-competitive initiatives. Since so many Democrats seem to be concerned about competitiveness, I'm bewildered by their priorities.

Samuelson argues that proposals such as parental leave, government mandated production limits on agriculture products, textile import restrictions and increases in the minimum wage "focus benefits on a selected constituency while spreading costs across a large population that won't realize it's being taxed." And the result of these inflationary, growth-choking government policies is, as Samuelson says, that "everyone loses.

Yesterday, in the the Labor-Management Relations Subcommittee of the House Education and Labor Committee, we addressed the issue of parental leave which Samuelson mentioned in his article. Parental leave is a perfect example of unnecessary and burdensome federal legislation that hampers American businesses ability to compete. Proponents of parental leave would have us require businesses employing 15 or more allow female and male employees up to eighteen weeks of unpaid leave when they become new parents.

Despite the inherent social problems of the bill, it sets a dangerous precedent in the field of labor-management relations in America. Benefits like parental leave have always been left up to individual employees and their employers. But its proponents argue that "the United States, alone among industrialized nations," does not have such a policy. Now, as I mentioned earlier, since 1975 the United States has created a net of 25 million new jobs, while all of Europe netted zero in that same time. Why in the world would we want to emulate their economies? If European governments want to dictate social responsibilities--and in the process discourage investment, productivity and entrepeneurship--we should jump on the opportunity to outpace them productively. It's ironic that many of the same proponents of parental leave are also big advocates of "competitiveness."

But that's just one example. Let's look at some of the other topics which Samuelson identifies as costly and counterproductive and which, in my opinion, hinder competitiveness.

The Chairman of the Senate Committee on Labor and Human Resources would raise the minimum wage at least one dollar-an-hour more than the current $3.35. Automatic annual changes would then keep the figure for minimum wage at half of average hourly earnings. While on the surface it appears like it would help people raise their standard of living, how many are going to lose their job -- and the chance to gain job skills -- if the minimum wage is raised?

The Chairman of the House Democratic Caucus would raise farmers' profits by having the government restrict the size of crop plantings. Raising the farmers' profits means raising agricultural prices to American consumers, and pricing American farm products out of the world market. One study has estimated that this farm bill would double food price inflation. By 1995, the extra consumer cost totals $65 billion.

Samuelson's review of some of the Democrats high-priority legislative initiatives, including these measures and others like plant closing legislation, double breasting and talk of postponing or eliminating the drop in tax rates, leads me to question the commitment of those who push these bills to addressing the competitiveness problem.

CONCLUSION

We can't ignore the fact that to be competitive today means responding to international economic challenges. But protectionist trade policies are not the answer. With sensible government policies -- designed to create a fertile field for economic growth and not build a fence around fortress America -- I have no doubt that American firms are more than capable of meeting international challenges and prospering in a global economy. In turn, this can only increase our productivity, standard of living, consumer choice, and employment opportunity.

Chairman **Gibbons**. Thank you. Mr. Crane?

Mr. **Crane**. Thank you very much, Mr. Chairman. I congratulate our distinguished colleague from Texas on his testimony. As he knows, I am in total sympathy with his approach to dealing with improving U.S. productivity and competitiveness.

There are a couple of things, though, that I think might be added to the bill that you have prepared on the subject.

According to every econometric study that was done on our tax reform of 1986, in the short-term, the cost of capital is going to increase significantly in the United States, which runs directly contrary to what we are trying to do to improve competitiveness.

Our historic experience of lowering the maximum capital gains tax from 49 to 40 to 28 to 20—produced an explosion of venture capital every time we lowered the rate, and simultaneously actually increased revenues to Treasury. Now we are moving in the other direction. We are taking the maximum rate up to 28 percent this year and 33 percent next year and beyond.

Given that raising the rate is a revenue loser on the one hand and shrinks the availability of venture capital on the other, which is important in a growing economy, would you consider revising at least that portion of the Tax Code? It was counterproductive, it seems to me, and I do not see any part of that tax bill as sacrosanct.

Mr. **Armey**. Well, I appreciate your point of view, and of course the compensating argument for me was that if you took the reduction in the corporate rate, the combination of the two taxes gave us a composite tax on capital earnings that was still lower.

But I think you are right. If we were to pursue sound fiscal and monetary policies, relieve the United States of these regulatory burdens and open world trade opportunities, we would have a wider arena in which the magic of supply side tax cuts could work. That could result in a growth rate in the economy that would sustain higher levels of revenue, affording the opportunity to give up some of the pernicious aspects of that tax bill.

We should look for and seize the opportunity to provide more investment incentive opportunities within the Tax Code. I know this committee worked extremely hard, and I do not want to be the one to recommend even more burden for you, but if there was a downside to the tax bill, I think you put your finger on one of the most serious concerns I had when I contemplated that bill.

Mr. **Crane**. I just saw figures yesterday, that our percentage of savings is at an all-time low for the past decade or so. Yet another component of our Tax Code is the taxation of such things as interest income. We have altered the treatment of dividends in a negative way as well.

The Japanese, by contrast, for all practical purposes, do not tax interest, dividends, or capital gains. Unfortunately, they are contemplating taxing small savers, although I would hope they would not emulate our own foolishness on that point, but rather that we might take some instructive lessons from the Japanese on how to generate savings and capital formation.

Mr. **Armey**. You know, the national income accountants have never dealt with savings very well and have always treated it as a reciprocal. I have always said that there are two kinds of savings.

If savings is the abstinence from consumption, then I either have forced savings in the form of taxes or voluntary savings. What is taken forcefully cannot be saved voluntarily. For example, I save over $3,000 a year that I am never given credit for by the national income accountants as I pay my Social Security tax.

Americans would be more willing and able to save if we could relieve ourselves of some of our own tax burden, especially to the extent that it supports Government programs that are either unnecessary or counterproductive to our well-being. I think, then, we would demonstrate our ability as savers to rise to the occasion and provide a greater pool of loanable funds for capital accumulation. We need though, to have a government that does not crowd us out of the game.

Mr. CRANE. That has been the concern for 50 years. After teaching our youngsters, as we were taught by our parents, not to squander paychecks at the end of the week but save for a rainy day, we turn around and penalize the saver practicing those virtues.

The Japanese are the first to tell you they learned their approach, from some University of Chicago economists after the war, like Hayek, Friedman, and Stigler. They find it puzzling that we who espoused these principles do not follow them, when giving people savings incentives works so well in their economy. I am not saying that is the only reason why they save so much in Japan, but I am suggesting that maybe we ought to consider that.

One final point, Dick, and this has to do with another aspect of the problem. We on this committee have taken positive initiatives through such actions as a free trade relationship with Israel and are contemplating the same with Canada, which hopefully we will accomplish. Another positive step we took was the Caribbean Basin Initiative. Then all those positive steps taken by this committee got emasculated by the Agriculture Committee. Agriculture turned around and set restrictions on sugar imports into this country that reduced Caribbean Basin nations exports to about one-fifth of what they were just 5 years ago.

Now we have so many subsidized industries in the United States that I think we ought to take a long hard look at what we have done, not only in terms of distortion market, but in terms of foreign policy implications. To cite a case in point, the Caribbean counties are turning to the Soviets, for markets opportunities to sell sugar, meanwhile we are giving them foreign aid to the tune of about $200 million, while denying them about $200 million worth of market access to sugar here.

This is one of those areas where one hand does not seem to know what the other is doing. I commend what Ways and Means did, but how we break up that combine on the Agriculture Committee is a challenge I think that this whole committee has to face.

Mr. ARMEY. I think you are right. On the one hand the division of labor that we have in the House to manage the Nation's business through, in fact, comparative advantage by way of the different committees having different areas of jurisdiction, is probably necessary.

The trick is always, how do we reconcile the right hand with the left. Hopefully, we will do better at that. I know it is a matter that most of us are interested in and concerned about. Sometimes, I guess, emergency will create inventiveness, and perhaps that will happen. I certainly do not pretend to have all the answers, but I do intend to be involved and working with everybody.

Mr. CRANE. Thank you for your testimony. I always enjoy hearing from you, Dick, even though we sometimes disagree on some issues. I think you contribute a great deal to the committee and to the House by taking the positions that you do, and I respect and appreciate them very much.

I sometimes think you outdo Adam Smith—even Adam did not go as far as you do occasionally.

Mr. ARMEY. If the gentleman would yield. In my home district, the joke of the other party that circulated during the campaign was: "If Adam Smith were alive today, would he wear a Dick Armey tie?" The answer they gave was "No, because Adam Smith was a genius." And my response was, "Thanks for making my point."

Mr. CRANE. I respect your position on the oil, since I know that issue is very sensitive to your State. You have basically taken the position that if an Arab country can produce oil at $4 a barrel, or $5 a barrel, we ought to buy it for that even though it shuts down our domestic producers. Is that basically your position?

Mr. ARMEY. It is a bit of a dilemma. On the one hand we do have our producers, and they are hurting. I am certainly not indifferent to them. But you know I also represent a lot more constituents filling up their gas tank at the service station, and lower oil prices are a big benefit to them.

The trick is always how do you manage to have your domestic firm live with the lower world price, yet help them to survive. We have a package for oil that parallels the trade expansion concept by way of reducing Government-imposed costs, to help them live with a lowered price.

Also, and I think ultimately most importantly, how do you enable the consumer to enjoy the benefits that come to him? Many times people characterize a free trade philosophy as being willing to export unemployment, but conversely I might characterize a restrictive trade policy as being willing to import inflation. So you really have to juxtapose this, and try to be understanding, concerned, and compassionate to both sides.

Mr. CRANE. I understand that, but basically, many countries can certainly refine oil, whether because of their natural resources, their oil, or because of a combination of these advantages and/or a State-run economy, or low wages. Moreover, I assume they can send the refined oil here so there is no way possibly that we could compete, until their resource runs out.

But that is the direction we ought to go, even though we have the refineries that we have to shut down here. You have no problem with that, do you?

Mr. ARMEY. I have a problem with it. But you know for 10 years or so, when the OPEC cartel was together and were raising the price of oil, we all said that rising prices were detrimental to the well-being of the economy. This increase was certainly the cornerstone of our inflation that we fought for years.

Now, all of a sudden, when the OPEC cartel has broken down, we say it is not fair because we do not have a cartel, and the price has gone down, and what a disaster that is.

Some place between being a disaster with a cartel raising price and a broken down cartel with a falling price there has got to be some truth. I suspect the truth lies currently at around $18 to $20 a barrel. We are very close to that. We can take a dollar a barrel away from the cost to the domestic producer just by removing the obnoxious windfall profits tax, which forces them to pay $1 a barrel, in compliance costs, whether they pay the tax or not. I understand that easing further restrictions could reduce the cost to our producers by another $3 a barrel.

The OPEC nations have found out that their need for international reserves is so great that they have got to pump oil. They cannot live with a $5 a barrel price any better than we can for their needs.

So, again, I really believe that if we give our producers some relief from the increase in their costs imposed by our Government, and we watch the natural course of events force the OPEC people to produce oil, for their own survival, we could probably end up with an equilibrium at around $18 to $20 a barrel, and still be pretty well off.

If, on the other hand, we hastily impose import restrictions, we have invited the Government back into the business and we threaten the independence of our producers. I have seen very little about Government efforts to improve situations for any industry that has given me much faith that they could do better here.

Mr. JENKINS. I have all of these oil people coming to see me. We do not have oil produced in my State. They are very upset because they do not think that they can survive, which I guess they may be right, in certain circumstances.

I just want to make sure that I can tell them let the marketplace work.

Mr. ARMEY. Well, I was very fearful about the way the independents would respond to my message when I went back to Texas and said I wasn't convinced of the merits of an oil-import fee, but they have proved to me why they are called independents.

They have received me well, they have encouraged me, and they have said we are hurting, but we will stick with our faith in the market, and you help us by seeing if this cannot be an opportunity for you to persuade the Government to stand down from interfering in our business.

Now that is not true of everybody, I can assure you. I have had some folks that have been very upset with me, but, you know, that is the problem we have in this business.

Mr. JENKINS. Are you against any restrictions, or any propping up of the price here of oil, domestic oil?

Mr. ARMEY. It is again a question of can we find a better alternative, and if we can reduce their costs, so that they can live with the lower price, and at the same time allow the consumer to enjoy the benefits they get, then I think we can do a better service to both the consumers and the producers, rather than imposing an oil import fee that may or may not work, but would certainly punish the consumers, and quite likely do so without helping the producers.

Mr. JENKINS. My time is up. I will not pursue it. Thank you.

Mr. ARMEY. Thank you.

Chairman GIBBONS. Thank you. Let me make an administrative announcement before we go too far today. Most of the members of this committee have been sitting since 8 o'clock this morning in meetings, and I would say that at around 12:30, wherever we are, that we call it quits for about an hour. Is that agreeable with the members? All right. Fine.

That will allow all of you who are on this agenda this morning, and we have a long agenda, so please make whatever guesstimates you can in your schedule.

Mr. Pease.

Mr. PEASE. Mr. Chairman, I have no questions. I would just like to thank our colleague for his testimony. Thank you.

Mr. ARMEY. Thank you.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Mr. Chairman, thank you. Dick, I also appreciate the counsel you have given us, and your rather consistent stand for what seems to you, and, to me, to be honest economics, even when it does not do your oil producers any good.

I have the same trouble with a crowd of folks that milk cows. They think they ought to be paid for producing a product that nobody wants to eat. Those are real problems and they have to be rationalized in a real world.

In any case, I just want to tell you, I am ready to sign up for my Dick Armey tie any time you hold the sale.

I take it from your testimony, that the most significant thing we can do, if we want to go to work on our trade deficit, is to get control of our own fiscal deficits.

Is that a correct interpretation of what you told us?

Mr. ARMEY. Yes, I would agree. I also think it is fair to characterize that as a position taken by the Congressional Budget Office when they put out their study.

I think it is a necessary prerequisite to effective implementation of any other policies. I think we can try almost anything, but without deficit reduction we are going to lose.

Mr. FRENZEL. Even people who come before this committee to advise us of all the wonderful things we can do to restrict imports have admitted the most important single thing we can do to right the trade balance is to balance the budget.

Then you give us a list of things that we can do to stop shooting ourselves in the foot, and they make a lot of sense, too.

Most of them, unfortunately, are beyond the scope of this committee's activities, but I think that most of the members of this committee would agree that those items you mentioned need addressing. May I ask you if you see anything in this bill that looks like it is going to expand our exports, or develop world trade, or even reduce our trade deficit?

Mr. ARMEY. Quite frankly, I do not see a good deal about this proposal that makes me feel overly optimistic, even though it has some good provisions.

Mr. **Frenzel**. It looks to me like it is intended to trade some jobs for some other jobs.

Mr. **Armey**. Yes. This is a problem we have.

Mr. **Frenzel**. But bottom line, it does not look as though it affects anything, with the exception of the Gephardt amendment, which may shrink our imports, but will undoubtedly also shrink our exports.

Mr. **Armey**. Yes. You remember the trigger-price mechanism, so controversial as it was, for dumping with respect to steel, and it is hard to tell how many jobs that cost before it was done.

We have seen various studies on the textile tariffs that are frightening. This is always a problem we have with restrictive practices. Going back to defining what is the public interest, you have to decide who is the public? Whose interest are you talking about? And it really breaks down to the special interests versus the consumers at large.

Mr. **Frenzel**. Yes.

Mr. **Armey**. As the President said in Tuesday's USA Today, "All economists throughout the ages have agreed that free trade is the best way."

Now as an economist and a Congressman, I am fascinated that we have such universal agreement in the discipline of jurisdiction, and yet in the world at large we could not get anybody to agree with us.

Mr. **Frenzel**. Of course.

Mr. **Armey**. So trying to understand the sort of social psychology of the emotional response to trade has been a fascinating experience for me. I think I have finally gotten a handle on it.

Mr. **Frenzel**. I assume you would consider it fairer if the Federal Government decides to pay people off who have been aggrieved by trade policy, that it pay them off out of its own pocket, rather than forcing the costs on other affected industries, or consumers, where the costs are of course hidden.

Mr. **Armey**. Yes. This is an interesting thing, and a couple of weeks ago Milton Friedman made the point with respect to farm policy. That we should give the farmers the money, and not distort the market.

I think the concept probably has a universal applicability. Otherwise, you end up really with what are income transfers among constituency groups, and in trade that gets to be a rather pernicious thing because the invisible victims are not heard from, and often are not recognized.

But I think we are doing better with that now. With recent studies, we are more able to identify them.

Mr. **Frenzel**. I thank you for your thoughtfulness, your good humor, and most of all your guts. You have stayed consistent when it is not the most pleasant way, but I still think it is the right way.

I yield the balance of my time.

Mr. **Armey**. I might say I thank the gentleman for his offer to buy a Dick Armey tie, but I do not think we could start a firm on the sales of two.

Chairman **Gibbons**. Mr. Armey, I appreciate your very fine and courageous testimony.

Let's go back to the windfall profits tax. During the consideration of the windfall profits tax, and after having listened to the arguments back and forth, I attempted a very straightforward, what I thought was a solution to the problem, and that is to just put a simple excise tax on petroleum at a certain stage, on all petroleum.

Well, I got two votes on that I think. The other fellow did not survive. But I would still be willing to trade off the windfall profits tax for just a simple excise tax on petroleum.

I hope that somebody out there is listening and maybe we can do business.

Mr. ARMEY. I think that Mr. Jenkins might have a handle on me. I may be sometimes too much of a purest, but one of the things about the market is that profits do not last long. Profits attract people into the industry and there is an expansion of the industry to meet that demand.

So I, frankly, considered the windfall profits tax, at its inception, to be nothing other than the Government's reflection of somebody's lack of faith and understanding in the market.

Chairman GIBBONS. It was really nothing more than a political attempt to get even with the oil industry for what everybody thought was an unreasonable runup of costs.

Mr. ARMEY. Well, I do not think they wanted us to be able to afford all those bumper stickers down South that some had.

Chairman GIBBONS. Thank you very much, sir. I appreciate it.

Mr. ARMEY. Thank you.

Chairman GIBBONS. Next we will have a panel of the Labor-Industry Coalition, LICIT, represented by Mr. Houghton and Mr. Samuel.

STATEMENT OF HOWARD D. SAMUEL, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, AND JAMES R. HOUGHTON, CHAIRMAN OF THE BOARD AND CEO, CORNING GLASS WORKS, ON BEHALF OF THE LABOR-INDUSTRY COALITION FOR INTERNATIONAL TRADE, ACCOMPANIED BY ALAN WM. WOLFF, COUNSEL FOR LICIT

Mr. SAMUEL. Mr. Chairman, my name is Howard Samuel. I am president of the Industrial Union Department of the AFL-CIO, and cochairman of the Labor Industry Coalition for International Trade which is known as LICIT.

Testifying with me today is James R. Houghton, the chairman of the board, and chief executive officer of Corning Glass Works, and on my right is Alan William Wolff, the counsel to LICIT.

LICIT, as I think most of you are aware, is a coalition of companies and unions bridging the full spectrum of American manufacturing industries. The coalition seeks to develop and advocate solutions for international trade challenges that will produce more opportunities for employment and production in the United States as well as in the world as a whole.

LICIT worked for more than 2 years, beginning in 1983, to develop the proposals in the Trade Law Modernization Act.

Many of these provisions were incorporated in the Ways and Means and House bills last year, and we strongly urge the committee to retain those provisions in H.R. 3 this year.

Let me make it clear, Mr. Chairman, that as a coalition, LICIT does not have a position on those parts of H.R. 3 that are not addressed in the Trade Law Modernization Act.

As individual members, the unions and companies in LICIT of course have definite views on other parts of the bill.

For example, as a representative of the labor community, we believe very strongly that Congress must take action to give our Government the right to protect us against trading partners who deliberately allow workers to be exploited.

I consider that a subsidy far more devastating to our living standards than any other subsidy already covered by the subsidy code.

We also believe that it is extremely important to include a deficit reduction clause in the bill this year. It seems to me that it makes much more sense to approach this very serious problem on a bilateral specific-targeted way, rather than to try to solve the problem of a huge trade deficit by trying to do it on a global basis.

But generally, we are all agreed in LICIT, that the free market plays a diminishing role in governing trade. The acts of governments have become the determining factor advantage today.

As a result, our trade policy must move from being passive and reactive to being active. We need to help shape the world economy, not just respond to it.

Let me comment, briefly, on two or three points in the bill itself.

A key trade policy tool we possess but have not used very productively is the import relief provisions of section 201. That is why LICIT strongly supports the approach to adjustment to import competition in H.R. 3.

In the House bill procedures are established for promoting adjustment through cooperation and commitments by business, labor and government.

This approach, under section 201, is politically feasible and economically rational. It provides for the political process to economic adjustment that is currently lacking in this trade provision.

With respect to the injury standard in section 201 cases, LICIT recommends that it be changed from "substantial cause" to "cause." However, if the committee decides to keep the current standard, LICIT recommends that it at least be clarified so that economic recession or decline in demand cannot be given as a cause of injury more important than imports, as in the 1980 auto decision.

Second, natural resource subsidies. The justification for an amendment to the countervailing duty law to address the use of two-tiered pricing arrangements, and other discriminatory below-market pricing structures by foreign governments has been well established.

The crux of the problem is discrimination. Governments should not set prices in a discriminatory manner that creates an unfair advantage, distorts trade, and injures U.S. and other free-market producers. LICIT urges the committee to retain the amendment to the countervailing duty law that addresses the problem of natural resource subsidies.

And finally, State trading and nonmarket economy dumping. LICIT recommends that the committee add provisions to H.R. 3 to address the problems of State trading and nonmarket economy dumping.

In both cases we are attempting to define a market standard for nonmarket behavior. Governments engaging in commercial world trade must be required to function on the same terms as private producers.

A calculation of injurious dumping from nonmarket economies should be subject to an appropriate and determinable market standard.

Let me conclude my statement, Mr. Chairman, by thanking you for your leadership in 1986. Since the House passed H.R. 4800, the trade deficit has risen, more thousands of jobs have been lost, and I think now it is time to review the 1986 provisions to make sure if they have to be tightened and strengthened to meet the challenge of 1987.

We are hopeful, and confident, that you will continue to take the leadership in 1987 to meet the problems of international trade. I will now ask Mr. Houghton to conclude our presentation.

Chairman GIBBONS. Fine. Thank you.

Mr. HOUGHTON. Thank you. My name is James R. Houghton. I am the chairman of the board and CEO of Corning Glass Works.

I am delighted to be here, for many reasons, one of which is that my brother has just joined your distinguished body, and I am delighted with that.

On behalf of the member organizations of LICIT, I want to commend you, Mr. Chairman, and the other members of the committee, for your efforts to complete this year the process of updating our trade laws that was begun in the last Congress.

I also want to thank you personally for your leadership position in recognizing the problems, and proposing actions to address them.

Howard Samuel covered a number of important issues that LICIT believes should be essential elements of any trade bill this year.

I would like to address three additional issues that LICIT would consider to be also in the essential category. First, strengthening the U.S. Trade Representative, second, export targeting, and, third, market access and telecommunications.

First, strengthening of the U.S. Trade Representative's position. A bipartisan consensus exists in the Congress that we need better enforcement of our trade laws and a more coherent and better formulated trade policy. How this best might be accomplished is still under discussion and debate.

LICIT believes that the best way to achieve both these objectives is to strengthen the authority of the U.S. Trade Representative.

LICIT has proposed that decisionmaking authority be transferred from the President to the USTR in the following areas: Section 201, section 301, section 337, section 406, and the administration of the GSP Program.

H.R. 3 transfers authority to the USTR only for section 201 actions. The USTR is also given authority to declare a practice unfair in section 301 actions, but the President is still the one who decides what if any action is to be taken.

In reality, this is often a decision by the Secretary of the Treasury, the Secretary of State, or some other Cabinet officer having an agenda that may often be in conflict with the enforcement of U.S. rights in the international trading system.

LICIT strongly urges the committee to consider a broader transfer of authority to the USTR. This transfer of authority will first of all depoliticize trade actions, increase the stature of the USTR in the Cabinet, and significantly enhance the negotiating position of the USTR with foreign countries.

Of all the trade law changes the Congress is considering this year, strengthening the authority of the USTR is probably one of the most important and significant, especially over the longer term.

A second issue is export targeting. Export targeting is an issue that, as the chairman of Corning Glass Works, I can speak about from personal knowledge given our experience with optical fibers.

Foreign countries should not be permitted to unfairly promote the export expansion of their own industries at the expense of firms and workers in the United States.

LICIT strongly supports the approach to export targeting in H.R. 3 where a mandatory response, not necessarily retaliation, is required where material injury is caused to U.S. firms and workers.

We also believe that a small amendment should be added to clarify the fact that the USTR can, at his discretion, enter into consultations or negotiations with other countries concerning an export-targeting program before it becomes injurious.

Third, and finally, LICIT has supported a generic approach to the trade problems in the telecommunications industry caused by the breakup of AT&T.

In effect through domestic deregulation we have opened up our market without getting any compensating access to markets overseas. While LICIT supports the inclusion of title II in H.R. 3 addressing the telecommunications problem, the coalition continues to recommend a generic approach that would apply to future trade problems caused by domestic, judicial and regulatory measures, for instance, in the domestic air-transport industry.

In short, Mr. Chairman, the House has made a lot of progress in the last year in the areas addressed by the LICIT bill. These are strengthening the USTR, section 201 reform, export targeting, natural resources, and telecommunications.

And we would hope that you would reconfirm last year's actions in this year's trade legislation.

Mr. Chairman, that concludes our oral presentation. Mr. Samuel, Mr. Wolff, and I, would now be glad to answer any questions that you or other members of the committee may have.

[The prepared statement follows:]

STATEMENT OF JAMES R. HOUGHTON, CHAIRMAN OF THE BOARD AND CEO, CORNING GLASS WORKS AND HOWARD D. SAMUEL, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, ON BEHALF OF THE LABOR-INDUSTRY COALITION FOR INTERNATIONAL TRADE

Our names are Howard D. Samuel, President of the Industrial Union Department of the AFL-CIO and James R. Houghton, Chairman of the Board and CEO of Corning Glass Works. Accompanying us is Alan Wm. Wolff, counsel to LICIT.

As you may know, LICIT is a coalition of companies and unions, bridging the full spectrum of American manufacturing industries. Our charter calls for us to explore issues of general trade policy -- issues affecting all sectors -- without taking positions on issues affecting individual industrial sectors. We recognize that polemical abstractions like "free trade" and "protectionism" are almost meaningless, and certainly counterproductive in seeking productive approaches to the realities of today's international trade. We seek to develop and advocate solutions for international trade challenges that will produce more opportunities for employment and production in the United States as well as in the world as a whole.

This unique coalition worked for more than two years, starting in early 1983, to develop the proposals of the Trade Law Modernization Act, much of which was incorporated in the Ways and Means and House bills last year. We strongly urge the Committee to retain those portions of H.R. 3. Let me emphasize that as a coalition LICIT does not have a position on the other parts of H.R. 3 beyond the trade law modernization provisions. As individual members, the unions and companies in LICIT of course have some very strong views on other parts of the bill, but as LICIT we have no position on them.

On behalf of the member organizations of LICIT we want to commend you, Mr. Chairman, and the other members of the Committee for your efforts to complete this year the process of reforming and updating U.S. trade laws that was begun in the last Congress.

Unlike last year, where enough consensus and leadership existed only in the House of Representatives to produce trade legislation, the Senate is prepared to act this year. LICIT is confident that a consensus can be reached this year so that necessary trade law reforms can be enacted into law.

The basis for such agreement exists in the the major trade bill being considered in this Congress -- H.R. 3. LICIT hopes the legislative process this year can produce a broad-based, bipartisan consensus that will provide a solid foundation for this nation's approach to international trade into the next century.

America has to take international trade seriously. It makes a difference if American companies are kept out of other countries' markets when the firms of those other countries have access to our markets. It makes a difference if other countries subsidize specific activities to unfairly gain a position in world trade at the expense of American firms and workers. It makes a difference if we fail to help our industries modernize and adjust to new forms of international competition.

There is no longer anything permanent about comparative advantage. The world changes rapidly. New technologies, production processes and products -- as well as new government programs -- are constantly being introduced and improved upon. We cannot have a static, passive view toward world commerce. If we have a competitive advantage in one industry today, there is no assurance that it will not be lost. If we have a competitive disadvantage today, there is no law of economics that says the disadvantage is permanent. As a result, our trade policy must move from being passive and reactive to being active. We need to help shape the world economy, not just respond to it.

LICIT believes that many of the key elements that should be contained in any comprehensive reform of our trade laws are already in H.R. 3. We would like to briefly summarize those elements and suggest a few more for consideration of the Subcommittee.

1. STRENGTHENING THE AUTHORITY OF THE U.S. TRADE REPRESENTATIVE

Unlike last year, there is now consensus that legislative reforms are required to obtain better implementation and enforcement of U.S. trade laws. There is not, however, agreement yet on the elements of such a legislative package.

LICIT believes that the trade law authorities should be exercised by the USTR, not by the President, as in current law. LICIT has proposed that decision-making authority be transferred from the President to the U.S. Trade Representative in the following areas: section 201 (import relief), section 301 (enforcement of U.S. rights), section 337 (patent and copyright protection), section 406 (market disruption from communist countries) and the administration of the Generalized System of Preferences (GSP) program.

H.R. 3 transfers authority from the President to the U.S. Trade Representative in section 201 cases and gives the U.S. Trade Representative authority in section 301 cases to declare a practice unfair, although the President still retains the authority to take final action, if any.

LICIT believes that the members of the Committee should consider a greater transfer of authority to the U.S. Trade Representative than contemplated in H.R. 3. We recognize that the Administration opposes transferring authority to the U.S. Trade Representative. However the issue really is not one of lessening Presidential authority. Rather, it is strengthening the authority of the U.S. Trade Representative. The U.S. Trade Representative serves at the pleasure of the President, is a member of his Cabinet, and is answerable to the President for his actions.

Transferring authority to the U.S. Trade Representative accomplishes three important objectives: First, it helps to depoliticize trade actions. Generally, foreign governments are seriously offended when the "head of state" issues an order restricting their trade as is currently the case with most U.S. trade laws. Second, it increases the authority of the U.S. Trade Representative with respect to other Cabinet officers who have a wholly different agenda from trade. Finally, it significantly enhances the negotiating position of the U.S. Trade Representative with foreign countries because they know that he has the authority to act on his own.

2. EXPORT TARGETING

A crucial, and long neglected area of U.S. trade policy is predatory export targeting practices of foreign countries. From machine tools to fiber optics, semiconductors and computers, foreign countries have sought to unfairly promote the export expansion of their own industries at the expense of firms and workers in the world's largest and most open market -- the United States.

H.R. 3 provides for mandatory action against targeting programs that cause or threaten material injury to U.S. firms and workers. While action is mandatory, retaliation is not required. H.R. 3 authorizes the Administration to take wholly domestic measures to strengthen the competitive position of U.S. producers that are the victims of foreign export targeting. LICIT strongly supports this approach to targeting under Section 301 and urges that it be kept intact with a small amendment to clarify the fact that the U.S. Trade Representative can, at his discretion, take preemptive action to address an export targeting problem before it becomes injurious.

3. SECTION 201 CHANGES

The approach to adjustment to import competition under Section 201 in H.R. 3 is another improvement in our trade laws that LICIT strongly endorses. Procedures are established for promoting adjustment by obtaining specific commitments from industry and labor for actions they intend to carry out in the adjustment period while not imposing direct government intervention into the union hall or corporate board room.

An industry adjustment advisory group would develop an assessment of current problems and a strategy to improve the industry's competitiveness, outlining steps that firms and workers in the industry could usefully undertake to meet the objectives in the adjustment proposal for the industry. The advisory group as a whole avoids specifying what any individual firm or union will do. Actions that individual firms and unions intend to undertake to meet the objectives in the assessment and strategy are specified in individual confidential submissions to the government.

This approach under 201 is politically feasible and economically rational. It provides for the political process to economic adjustment that is currently lacking under section 201.

With respect to the injury standard, LICIT recommends that, if the subcommittee decides to keep the current standard of "substantial cause" that this standard be clarified so that an economic recession or decline in demand in an industry cannot be given as a cause of injury that is greater than imports (as in the 1980 auto decision). While LICIT believes that such a change goes a long way toward taking care of interpretive and consistency problems with the current standard, we still believe that problems will remain with different members of the Commission using different and inconsistent methodologies to determine "substantial cause." The proposed standard would be: "substantial cause means a cause which is important and not less than any other cause except for a general economic recession." Comparisons will still be required about the relative economic effect of various "causes" of an industry's difficulties. How important are imports compared with changes in patterns of demand and other factors. In some cases the answer may be obvious. In most cases, as in the past, there will be a number of interrelated factors accounting for the industry's economic difficulties. These factors will be difficult to untangle. And it will be almost impossible to quantify the importance of imports compared to any other factor. As a result, LICIT still has reservations about keeping the qualifier "substantial" for causation, which goes beyond the GATT standard that imports should be a "cause" of serious injury.

4. NATURAL RESOURCE SUBSIDIES

The justification for an amendment to the countervailing duty laws has been well-established. The natural resource issue has been examined and debated by the Ways and Means Committee for the last four years. Legislation addressing the problem was approved overwhelmingly by the House of Representatives in 1984 with strong bipartisan support and again in H.R. 4800 last year.

In essence, the natural resource subsidy amendment says that raw material inputs provided by governments to producers must be priced at their real market value. This is a fundamental principal of free trade, both in the international trading rules endorsed by the United States and in the trade laws enacted by the United States. Governments should not set prices in a discriminatory manner that creates an unfair advantage, distorts trade, and injures U.S. and other free market producers.

The crux of the problem is discrimination. Foreign governments are providing capital and natural resource inputs in a discriminatory manner to construct and operate excess production capacity in certain commodities. This activity is oversupplying world markets, depressing commodity prices and injuring efficient U.S. producers. Such capacity would not be built and operated by private investors and producers. It fails to recover the market cost of capital and the market cost of natural resource inputs. Yet governments are continuing to undertake uneconomic investments which cannot be justified on the basis of any reasonable commercial benchmark in the world marketplace. In this way, governments are shifting the inefficiencies of their own economies onto industries in other countries which must respond to commercial conditions in the marketplace.

5. TELECOMMUNICATIONS/DEREGULATION

LICIT has supported a generic approach to the trade problems in the telecommunications industry caused by the break-up of AT&T. Where judicial or administrative decisions by the United States Government substantially alter access to the U.S. market, the USTR is directed to obtain fair and equitable market opportunities through negotiations where USTR finds a significant denial of such market opportunities abroad.

In H.R. 3, Title II addresses this problems in the telecommunications industry in a specific, not generic, manner. LICIT supports the inclusion of this Title, but continues to recommend that a generic provision that would apply to such future trade problems -- for instance in the domestic air transport industry -- should also be included.

6. STATE TRADING/NONMARKET ECONOMY DUMPING

Governments engaging in world trade must be required to function on the same commercial terms as private producers engaging in world trade. Capital and material must be provided on commercial terms and considerations. This is particularly the case for state trading and state enterprise under Article XVII of the GATT.

LICIT recommends that the Subcommittee members consider adding provisions to the House bill on state trading similar to those in S. 490, the Bentsen bill. Specifically, section 301 should be amended to add to the definition of unjustifiable trade practices trading by a state-owned enterprise on other than commercial terms.

The provisions of our antidumping law with respect to enterprises in nonmarket economies requires significant improvement. Because of the inherent difficulty of determining actual production costs in a nonmarket economy, current law relies on the use of a fictitious construction of costs or prices in a surrogate country. This approach has proven unworkable in many cases. However, it is the only workable approach in cases involving commodity products. LICIT recommends that the Subcommittee members consider adding a provision to the House bill like S. 307 introduced by Senator Heinz. This bill would set the standard for determining whether a nonmarket economy was dumping based upon the average price at which the same or similar merchandise is imported from a market economy that accounts for the largest share of U.S. imports.

Both S. 490 and S. 307 contain a Special Rule for Fungible Products that requires the use of NME factors of production, priced out in a surrogate country, to construct a comparable cost of production in real market terms. Commodities are undifferentiated in quality and compete almost solely on the basis of price. Prices must be based on real economic costs established by market forces.

The average import price benchmark will not work in commodity trade because the lowest price in the market sets the market price for all competitors at any given time. Using such a benchmark would result in measuring a depressed NME price against the same depressed price in market economies in virtually all open markets.

S. 490 and S. 307 also allow settlement of cases through suspension based on quantitative restrictions as well as price undertakings as provided in current law. The bills thus permit more flexible dispute resolution in NME cases, which may provide the only means to effectively resolve some NME trade disputes.

Mr. Chairman, that concludes our prepared remarks. We would be happy to answer any questions that you or other members of the Subcommittee might have.

Chairman GIBBONS. We appreciate your coming. We appreciate your great help in drafting last year's legislation and this year's legislation, and we will continue to use your resources.

We particularly appreciate the fact that you have a very talented counsel in Alan Wolff, a man who has had great practical experience in working with the Congress, in working with these programs from the executive point of view for some time, and we need your help.

Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman. I, too, want to thank you folks for your testimony this morning.

I share your concerns on trading with nonmarket economies. I did not get the chance to ask Mr. Bieber earlier about the hourly pay, for example, to workers in the Yugo plant in Yugoslavia.

My impression is that if one were to compare the Yugo hourly wage with what Mr. Bieber described as the hourly wage in South Korea, the Yugo certainly would have the distinct advantage of coming in here and underpricing even the South Koreans with their Hyundai.

Meanwhile, we give them most-favored-nation treatment, special dispensations that go above and beyond the call of duty, it seems to me. I have always felt that any nonmarket economy should not under any circumstances, enjoy such benefits as general system of preferences or most-favored-nation treatment.

Romania is probably as totalitarian a regime as any on the face of this Earth, and the administration did cut off GSP to them. Nonetheless, we continue to give them most-favored-nation treatment, notwithstanding the fact that there are instances where they have dumped in our markets.

Would you gentlemen basically support the denial of preferential trade treatment to any nonmarket economy at a very minimum? I mean, such as elimination of MFN?

Mr. SAMUEL. Congressman, we appreciate your interest on this issue which, as you know, we share. The decisions in regard to many of those factors you mentioned are really based on political, not economic reasons, and, as such, LICIT has not really taken a position on those issues.

Mr. CRANE. I grant that this is a political issue. Frankly, I have been trying to knock out preferential treatment to nonmarket economies and I get great resistance from the State Department.

I say that as a Republican, and Republicans are now at the helm of the State Department. I really wish that you folks could provide some insight, because regardless of who is in charge at State, whether Democrats or Republicans, it seems to me a very counterproductive policy. I do see a problem in attempting to ascertain unfair practices in those countries. To equate nonmarket economies with costs of input and production in market economies—and here I sound like Don Pease—is problematic as you cannot determine what the cost of labor is, for example, in Yugoslavia. It is certainly state-decreed, and totally divorced from market considerations.

On the other hand, a dollar an hour may be a reasonable market price of labor in some less-developed countries, but I am not sure how you arrive at making these distinctions.

I have, as I have said, an instinctive prejudice against any nonmarket economy, and I do not think it is at all possible to arrive at an understanding of what those real costs are.

How do you compare Yugoslavia's level of development with Chad, or some other Third World country, whether Latin American, African, or Middle Eastern? How can one really equate a free-market price in a less-developed country with a dictated market price in a slave state?

Mr. **Samuel**. Let me just answer one part of that Congressman, and ask Alan Wolff to also fill in.

As the Congressman knows, the worker rights provisions do not really get involved in trying to compare worker pay. I think we would be getting into a thicket there which would make it impossible for us to construct any kind of reasonable standards.

We deal instead with basic worker rights, which can be compared from country to country, but let me ask Alan Wolff, if I may, to respond to your question.

Mr. **Wolff**. Well, we do agree, Mr. Crane, with the notion that one cannot deal with nonmarket economies on the same basis that we deal with market economies.

Where there is no market mechanism that is setting the prices of goods that are transferred to this country, then we have to have some reforms either in the area of section 301, as the Senate bill—the Bentsen-Danforth bill—would do, or, in the area of antidumping, which Senator Heinz has proposed. The Heinz proposal would use as a dumping standard the average market price at which free-market goods enter our country as a proper price comparison.

One cannot use the lowest market price because wherever there is a fungible good it will be whatever the nonmarket economy chooses to drive the price to, and one cannot effectively use the existing antidumping law standards which have a very convoluted way of going to third-country markets seeking a surrogate for the nonmarket economy.

So we do need a separate set of regulations, and that could well be provided for in this statute that you are crafting.

Mr. **Crane**. One thing Mr. Samuel touched upon, which is extremely disturbing to me, is the variety of jurisdictions and parochial interests we have within our own government. I touched upon our Agriculture Department negating the good work that we did with the Caribbean Basin Initiative and restricting our Caribbean neighbors regarding their exports.

It also seems contradictory to me to have the State Department, for whatever reason, subsidizing nonmarket economies through GSP or MFN treatment. In addition, we put pressure on both commercial banks and multilateral lending institutions, which are subsidized by the U.S. taxpayer, to provide financing. Then in the final analysis, Yugoslavia builds the Yugo facility and thereafter employs low-cost workers producing Yugos which, upon export to the United States, undercut any comparable market economy costs to produce a similar car.

I thank you for your testimony and, unfortunately, our time has expired.

Chairman **Gibbons**. Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman, and thank you, Mr. Houghton and Mr. Samuel, for your testimony which I found to be very, very helpful.

And I would like to, first of all, join the chairman in commending LICIT for the excellent work it did during the last Congress in recommending to us a specific language for the trade remedies sections of the code.

As you pointed out in your testimony, much of what is in H.R. 3 came out of the recommendations of LICIT, and I think you ought to be very pleased for that achievement.

Let me, first of all, turn to an interest of mine that you did not cover direct in your testimony, and I note from your testimony that you specifically, as a coalition have the ground rule that you do not take positions as an organization on things other than trade remedies.

I am interested, as you have heard, in the question of worker rights, and that is a part of H.R. 3. I realize it is beyond the scope of your organization as an organization, but I wondered if either or both of you might be willing to comment on the worker rights section in your capacity as individuals?

Mr. HOUGHTON. Well, you are right. LICIT has not taken a position on this, and so this is more of a personal bias. I guess I personally agree with the concern about basic human rights in countries other than our own, and I would not mind if the administrative authority, which I would guess would be the USTR, were given some discretion to decide how to deal with this. It would not bother me to see the USTR given discretion in deciding how to deal with the labor rights problem.

Mr. PEASE. Mr. Samuel.

Mr. SAMUEL. Mr. Pease, as I indicated in my opening remarks as an individual, as a representative of the labor movement, of course I very strongly support the provisions which were submitted by you originally in behalf of worker rights.

I regard this as an issue really in some ways dealing with a subsidy that a country which allows or promotes the exploitation of its workers is, in effect, giving its employers a subsidy, a much more devastating subsidy than any other which is still under the present subsidy code. And it seems to me, for this reason alone, we should be able to take action against countries which provide those kinds of subsidies which are particularly reprehensible.

There are many other reasons as well, which I think you and I share.

Mr. PEASE. Thank you very much, both of you.

Let me move on now to a question about section 201 that is within the purview of your organization.

You have recommended that we change the substantial cause test to just a cause tracking the GATT.

If that were to be the case, if we were to make that change, and the standard was that an industry could petition for relief under section 201, if they could prove that imports were a cause—it might be 50 percent or 40 percent, or even 5 percent, would you anticipate that there would be a lot more 201 petitions filed and, if so, what do you think would be the consequence of that?

Currently, as you know, the ITC determines whether there is injury, first of all, and, secondly, whether imports are substantial cause of that injury. You would substitute cause for substantial cause. If the determination of the ITC is affirmative, then at some later point the ITC considers the question of what remedy would address that injury.

And it is at a third stage when the matter leaves the ITC and goes to the President where the determination is made on broader grounds, what will this do to consumers? Can the industry become competitive and all that sort of thing, and what are the foreign policy implications and so on?

I guess what I am getting at is would we be building in some false expectations if we made a change which led to a lot more cases being filed, and presumably a lot more affirmative decisions being made by the ITC only to send those on to either the President or, under your recommendation, the USTR, where other considerations might dictate that the relief that they are entitled to would not be given. Should there be automatic relief or should there be considerable discretion still allowed as to whether relief is actually granted?

Mr. SAMUEL. Let me just make one comment, Congressman, and then ask Alan Wolff to supplement my remarks.

I am not terribly worried about more cases coming to the ITC under 201. 201 is known as the escape clause. I regard it more as a safety valve. It seems to me a wise use and effective use of section 201 would help mediate a lot of the microproblems that lead to a macroproblem. And it is far better to deal with those problems as individual sector problems than to allow them to affect our trade balance as a whole.

Let me turn and ask Alan Wolff to supplement.

Mr. WOLFF. I might say first that it is hard to find that the trade laws of the United States are working when most trade remedies are now granted outside of the existing laws. Therefore, something is not as it should be, and that should be changed.

The key reason for dropping the term "substantial," which would bring us into conformity with the GATT standard where just imports cause or threaten to cause serious injury, would be to avoid the situation where, say, recession is found to be a larger cause than other causes. It is really what the International Trade Commission has, in any event, done in the motorcycle case. This was a change in their interpretation of the law from the auto case decision. And this would confirm what the Commission has done.

I do not think this would have the effect of opening up the floodgates to get a lot of additional cases. Imports would still have to be causing the serious injury that has to be found, and the relief recommended and put into effect by the President would be relief from import related injury, not injury caused by recession or high interest rates, or any of the other numerous factors which might cause injury to an industry.

And I might say that the Administration, in its proposals, has recommended something very similar to combat the problem a little bit differently, and that is unbundling the group of causes which might be taken under the rubric of recession so that there would not be a repeat of the 1980 auto case.

Mr. PEASE. Thank you very much.

Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Mr. Chairman, I want to thank the panel for coming. It is always good to see our distinguished former Ambassador, Mr. Samuel, and it is certainly nice to know a relative of a Member of Congress. Everybody should have one. We thank all three of you.

Chairman GIBBONS. Mr. Guarini.

Mr. GUARINI. That was shorter than I expected.

I also want to say that it is good to see the team, the LICIT team back again. The great work that was done over the last several years and intensive years by Alan Wolff. And Emil Houghton and Al were our colleagues, and we are very happy to greet you, Jim, and my old classmate, Howard Samuel from college, and see Bryan Turner and Allen Coors here as a support mechanism.

You have done a magnificent job. H.R. 1950 last year had 113 sponsors, and you put in several hard years as a locomotive pulling this trade bill and, at the same time, creating an awareness as to our trade imbalances. And now they are $170 billion. And when you started and were very alarmed and sent out an alarm nationally, it was only a fraction of the $170 billion. So I can imagine how much more we are concerned today.

So I really want to thank you for the great job that you have done.

I would like to ask Howard, if I may, concerning the Advisory Board of Industry, Labor and Government, the Chairman of the USTR would be at the head of the Board, whereas the Senate has a provision where the ITA would take the chairmanship and note have it in the USTR's hands.

And I wondered whether or not you would like to comment on that, and does it make a matter of whether or not the USTR or the ITA person heads and leads the process?

Mr. SAMUEL. Well, I am principally interested, Congressman, in that this kind of a framework be established. as you know, so that we can begin to approach some of our problems in a rational way, bringing in all the parties into the discussion.

The reason we would think that the USTR would be more advisable than the ITC is that the USTR is involved in and responsible for international negotiations. So that if the conclusions of the tripartite panel involves negotiations, the USTR could be directly involved from the beginning.

Mr. GUARINI. You would prefer the House version then?

Mr. SAMUEL. Yes.

Mr. GUARINI. All right. Now, there are some mandatory provisions besides—mandatory revisions in 301 of targeting, and the Senate bill, I understand, makes it discretionary. And I would like to ask Alan Wolff where we have targeting as a violation, would you prefer the mandatory retaliation, or would you prefer the Senate version which would leave it in the discretionary category and why?

Mr. WOLFF. Well, targeting is an extraordinarily serious form of foreign government intervention in the marketplace with import restrictions, subsidies, and a range of support of programs, including waiver of antitrust laws abroad. Where that sort of program causes material injury to an American industry, the administration should be required to respond. The response does not necessarily have to be retaliation or import restrictions. That should be optional. The administration should be allowed to choose among a series of remedies, whether it might be changes in other domestic laws which would assist the competitive standing of an American industry that is confronted with this kind of targeting, or it might be negotiating access to a foreign market or a change in the foreign programs.

It need not be retaliation, but there should be a required response. It is important enough. It is far more important in my view than those statutes which are already mandatory—countervailing duties or the imposition of antidumping duties. There should be a required response as is included in H.R. 3.

Mr. GUARINI. And the required response should have a time limit? There has been some discussions by the members of the Committee that the effective dates should be moved back, and talking about targeting and the version of natural resources and the right of private cause of action.

How do you feel about the dates and the timing, and what impact would it have if we move all these dates backwards instead of keeping what is in the bill, H.R. 3?

Mr. WOLFF. There has been a tendency over time to establish tighter deadlines, and that is useful up to a point. There has to be some time to work out international negotiations, especially with respect to targeting where what one wants to do is remove the distortion, not just offset it. If the Japanese or Koreans or Brazilians or Mexicans have engaged in a program of targeting, getting them to open up their markets and allow us to compete freely over there is going to be a negotiating problem that there should be adequate time allowed to deal with it and reach an agreement if possible.

Mr. GUARINI. Do you take any issue with the timing that appears in H.R. 3, or are you in accord with that?

Mr. WOLFF. No. I think that, as I recall, the time frames are reasonable. We will, if we might take a look at that and respond for the record.

Mr. GUARINI. All right. Thank you.

And, Jim Houghton, may I ask you could you respond regarding—there has been much talk about bilateral deficit reduction, the Gephardt bill, and I wonder whether or not you have any comments concerning our bilateral imbalances and what we should do about it?

Mr. HOUGHTON. Well, again, LICIT is taking no position on this issue. But speaking personally, I think we have got to address this problem as a nation. It is a very serious problem. LICIT supports extending the President's surcharge as a way to deal with the problem. If we are to do more than this, which I would not mind seeing, I think we should give the administrative authority, basically being the USTR, discretion and flexibility to get at the deficit problem.

I am not sure that I personally support anything that puts handcuffs on the USTR or makes him do certain things. But I think if we can give more authority to the USTR, it would be very helpful.

Mr. GUARINI. You are in complete accordance with the Gephardt amendment then?

Mr. HOUGHTON. Philosophically, yes.

Mr. GUARINI. Philosophically?

Mr. HOUGHTON. Yes. Well, the Gephardt amendment, as I understand it, maybe I had better get Alan to talk about it, does not have much flexibility.

Mr. GUARINI. Do you have any thoughts on that, Alan? Any advice you can give the committee?

Mr. WOLFF. Well, it has some flexibility, but within limits. And what I believe that Mr. Houghton is driving at is that one of the major problems facing the Nation is excessive imbalances in trading accounts, certainly our own, and those of a number of the major trading countries with whom we deal, and that this bill ought to have a provision that addresses that problem and provides sufficient authority to do so.

Mr. GUARINI. Have you examined the proposal and do you have an opinion on the proposal, or just philosophically are you in accord with the Gephardt Amendment?

Mr. WOLFF. Well, my own personal view is that while something like the Gephardt amendment ought to be included in the law, that there is room for amendment, there is room for change, because the focus of the debate about the Gephardt Amendment frankly has been about the response rather than the problem.

It is allegedly a guise for imposing import restrictions in the United States, and it should not be seen that way. It should be seen as an attack on foreign trading practices, mercantilism across the board, which has to be unacceptable, and is not adequately dealt with in either U.S. law or international agreements.

Mr. GUARINI. Have you formed any legal opinion whether it would violate GATT or not?

Mr. WOLFF. Oh, if we imposed import restrictions on a country to have a mandatory deficit reduction, unless it were sanctioned by a specific GATT finding under Article 23, which is unlikely, it would be a violation of GATT.

Mr. GUARINI. All right. Thank you.

Chairman GIBBONS. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

Thank you, gentlemen. I would join in welcoming you, and salute you for your concern over non-market economy—the non-market economy problem, and recommend that you look at legislation which I have, which uses injury test.

It seems to me we have been around this problem for a long time, and we have got to look for some new types of solutions, but I share your concern and hope that we are able to reach a definitive solution and include it in this legislation. And if you have any suggestions, after you look at mine, I would be glad to have them.

I thank you for coming, and thank you, Mr. Chairman.

Chairman GIBBONS. Thank you, gentlemen.

We now have a very large panel coming on. If we have to interrupt this panel at 12:30, we will, with the understanding we will come back at 1:30. So if the panel will take their positions, and I apologize to you for having caught you in the middle of this.

But Mr. Nehmer is a veteran of these matters, having been here since before the turn of the century.

Mr. **Nehmer**. At least, sir.

Chairman **Gibbons**. I see your old friend, Harry Lamar, back here too. So here we are again.

The United States Council for International Business, Mr. William Walker; the American Fiber, Textile, Apparel Coalition; the American Iron and Steel Institute; the Group of 33; Rubber and Plastic Footwear Manufacturers Association; and the Synthetic Organic Chemical Manufacturers Association. I feel that all of you are my friends of long standing, and I welcome you here.

Mr. Walker, you are listed first, but I do not know how you all have divided this up, so why do I not just turn it over to you and let you all do what you want to do.

Mr. **Walker**. Would you like me to begin, Mr. Chairman?

Chairman **Gibbons**. If that is agreeable to the rest of your colleagues out there, it is all right with me. Go right ahead, Mr. Walker.

STATEMENT OF WILLIAM N. WALKER, CHAIRMAN, TRADE POLICY COMMITTEE, U.S. COUNCIL FOR INTERNATIONAL BUSINESS

Mr. **Walker**. Thank you, Mr. Chairman.

My name is William N. Walker. I am a partner in a Washington-New York law firm; I served as Deputy Special Trade Representative in the Ford administration, and I am here this morning representing the U.S. Council for International Business, an organization comprised of some 300 businesses and other organizations concerned with international economic issues.

The thrust of our statement, Mr. Chairman, deals with the grant of negotiating authority to the Administration for the Uruguay round of trade negotiations.

The U.S. Council has been a strong supporter of the Uruguay round as it is now called, and has endorsed legislation to grant the Trade Representative adequate authority to conduct these negotiations. We supported the Administration in its call for a new round of negotiations.

The membership of the Council believes that the agenda for those negotiations which was hammered out in Punta del Este by Ambassador Yeutter represents a significant opportunity for U.S. business to secure needed access to foreign markets and disciplines for various elements of the trading environment which are either not covered at all by international trading laws or are inadequately covered.

So we believe that the Uruguay round, while it will not have immediate short-term results, holds very important long-term benefits for the American business community and for the American economy. Consequently, we believe it is of paramount importance for the Administration to be granted negotiating authority on terms that will enable it to conduct a successful negotiation.

In particular, the fast track procedures in section 102 for congressional review in voting on agreements reached concerning nontariff barriers, trade-distorting practices, and new GATT rules should be renewed for up to 10 years to assure adequate time and flexibility to negotiate good agreements without sacrificing important U.S. objectives. The legislation should permit submission of agreements for Congressional review as negotiators see fit within that period, that is, they should not be required to hold them and bring them back all at once. Availability of the fast track process is essential to establish the credibility of our negotiators and to assure that the agreements struck genuinely represent the "bottom line."

Foreign trading partners are not going to negotiate once with USTR, and then come back and negotiate again with the Congress. Congress must remain free to reject individual agreements, but it should not set up a procedure which would undermine the efforts of the negotiators by involving it in point by point approval of the agreements.

Congressional concerns about achieving U.S. objectives should be assured through adequate consultation and participation in the negotiating process.

Finally, Mr. Chairman, I would point out that while the trade deficit is the factor which is apparently the proximate cause of the concern underlying this legislation, we want to point out that the trade policy and trade policy measures are not the means by which that trade deficit is going to be remedied.

As you well know, the trade deficit is the result of our budget deficit, and of a long period where the dollar was overvalued. It is a result the debt crisis. It is the result of the fact that in the agricultural field, many of our former customers are now self-sufficient. It is a result of the U.S. economy having grown faster than other economies. It is a result of a whole series of factors, but it is not the result of American trade policy. We are not facing a failure of American trade policy, and we would caution that the Committee not take steps that would damage American trade policy, or that would damage our opportunity to gain access to foreign markets, or that would lead to retaliation.

The American economy has an important stake in maintaining a strong export orientation. And we fear that if protectionist measures are enacted by the Congress, the reaction of our foreign trading partners would be to close their markets to our exports. And we believe that would be bad for industry and bad for the country generally.

Thank you, Mr. Chairman. I will be glad to respond to questions.

[The prepared statement follows:]

TESTIMONY OF THE UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS BEFORE THE SUBCOMMITTEE ON TRADE OF THE HOUSE WAYS & MEANS COMMITTEE

Mr. Chairman, Members of the Subcommittee, I am William N. Walker, Partner in the Law Firm of Mudge, Rose, Guthrie, Alexander & Ferdon. I am pleased to be here today on behalf of the U.S. Council for International Business in my capacity as Chairman of the Council's Trade Policy Committee. The U.S. Council for International Business represents some 300 U.S. companies, law firms and organizations concerned about international economic policy issues that affect business opportunities. The U.S. Council has a unique role as the U.S. business organization that officially consults with major international economic institutions, including the General Agreement on Tariffs and Trade (GATT) and the Organization for Economic Cooperation and Development (OECD), through its affiliations with the International Chamber of Commerce, the Business and Industry Advisory Committee to the OECD, and the International Organization of Employers. The Council's Trade Committee has been one of the chief private sector spokesmen advising the U.S. Government on American business objectives in the new round of GATT negotiations, and it has had a leading role in identifying detailed U.S. business objectives for specific issues in the negotiations.

Mr. Chairman, our members share the concerns of the co-sponsors of H.R. 3, the Trade and International Economic Policy Reform Act of 1987, about the competitiveness of U.S. exports, the large U.S. trade deficit, and the imperative of modernizing the GATT trading system to make it more equitable and effective. We also agree with the assumption in this legislation that negotiations to reform the GATT are only one important and necessary part of a comprehensive package of measures for treating the interaction among trade, finance and investment. The U.S. Council has long urged a comprehensive approach that includes such elements as rigorous enforcement of U.S. trade laws against unfair trade practices, domestic and international action to promote global growth and stable exchange rates, and Secretary Baker's plan for managing developing country debt burdens. Recently, the Council has issued a business blueprint for the kind of comprehensive approach needed to enhance U.S. competitiveness. A copy of this statement is attached and I commend it to the attention of the members of this Subcommittee. Only through such an approach can we attack all the factors that contribute to the imbalances in the international economic system that are causing the massive U.S. trade deficit.

In particular, I want to stress on behalf of the U.S. Council our concern that, in its efforts to deal with our excessive trade deficit, Congress might enact legislation which will not only have no significant effect on it but could seriously damage the competitive potential of the U.S. economy. The point cannot be made too often that trade policy action, whether directed toward opening foreign markets or restricting access to ours, will only have a marginal effect on the size of the total U.S. deficit (most experts estimate the maximum impact at around $10 or $15 billion), and only then if such action results in a change in American savings and investment levels. The most important and effective action Congress could take to reduce the trade deficit would be to reduce the budget deficit so that the imbalance between domestic savings and the uses of those savings in investment and financing the deficit will be reduced. It is that domestically generated imbalance which has created the need for capital flows from abroad, and thus an offsetting trade deficit.

That said, there is much that trade policy can do to create the internal and external conditions that will permit competitive enterprise in the U.S. to prosper once Congress and the Administration get the macroeconomic balance right. Multilateral negotiations as contemplated in the recently launched Uruguay Round have a major role to play in that process. However, multilateral negotiations to reform the international trading system are essentially a long-term exercise that will not have an immediate impact on U.S. trade performance. Nevertheless, multilateral negotiations are vital to the interests of U.S. business because it is only through this mechanism that we can expand export opportunities and strengthen the rules which govern trade on the broadest basis. In addition, we need multilateral negotiations to establish effective disciplines over practices that distort or inhibit trade in areas like services, intellectual property rights and trade-related investment issues, which will be increasingly important for future U.S. competitiveness, and which are,for the most part, not covered by present international rules. Bilateral negotiations, such as those underway with Japan, Canada and others, can have important results in removing barriers to U.S. exports in the shorter term, but are no substitute for a multilateral approach to improvement of the world trading system. Our members believe these negotiations are necessary to achieve a fairer and more efficient system that will bolster U.S. competitiveness and they want Congress to provide the necessary authority for U.S. leadership in a new GATT round.

From my own experience as Deputy USTR in Geneva during the middle phase of the Tokyo Round, I can testify to you that U.S. leadership is vital to the success of these negotiations: without effective U.S. leadership the negotiations have no chance of achieving our objectives.

In this regard, I wish to emphasize that Congress must refrain from passing unilateral changes in trade laws that breach U.S. GATT obligations. Such changes destroy the credibility of U.S. leadership and undercut the efforts of U.S. negotiators. In the longer term, such changes have the effect of further eroding the very GATT system that we must strengthen. Indeed, adherence to existing GATT obligations is a necessary precondition for achievement of U.S. objectives in these negotiations; unilateral U.S. actions could undermine the U.S. leadership role and compromise negotiations.

I am aware of the argument that writing such changes into U.S. law is the best way to get the attention of other governments and bring them to the bargaining table. However, as a practical matter, such tactics rarely succeed. Indeed, they often have the counterproductive effect of putting the U.S. negotiator in a position of having to defend the unilateral U.S. breach of international law, rather than in the position that he should be occupying of leading the attack on outmoded practices or toward a consensus on new approaches.

To put this caveat in context, I should add a few words about U.S. Council views on the efforts to improve U.S. trade remedy laws, an important element of the overall strategy for U.S. competitiveness, although it is not our main focus today.

The U.S. Council supports rigorous use of U.S. trade laws to open markets for American products and to counter unfair trade practices, and it supports modifications of these laws to make them more effective; for example, changes in Sec. 337 of the Tariff Act of 1930 to enhance protection of intellectual property rights. However, the Council opposes several provisions in H.R. 3, which would be too restrictive of trade or too damaging to American interests. An outline of Council views on specific sections of the legislation is appended. Our main concern is that Congress refrain from passing provisions that would:

-- prejudice the ability of the President to assert national over sector interests;

-- make access to import relief virtually automatic and thus make protection the preferred response to fair competition;

-- severely limit the flexibility U.S. negotiators need to bargain effectively for the elimination of unfair or excessive foreign barriers, or otherwise undermine U.S. leadership.

The Uruguay Round negotiations will not be easy; the U.S. brings an ambitious set of objectives, and, unlike the earlier GATT rounds, this round will not focus on easily-identifiable and quantifiable tariff measures that are no longer the main obstacles to trade. Tariff barriers are still costly for some of our members, and further cuts should be among U.S. objectives, but tariffs will not be the main focus of this round. The main work will be on non-tariff barriers and domestic measures impacting trade that are more difficult to identify or quantify and that are highly sensitive to political pressures.

U.S. leadership was instrumental in securing an agenda for the round at the Punta del Este Ministerial Conference that addresses a comprehensive set of U.S. concerns including: agricultural trade, subsidies, improvement of dispute settlement procedures, safeguards, strengthening the Tokyo Round Codes, and extending the GATT to important new areas, such as intellectual property, services and trade-related investment measures.

To have the maximum opportunity to achieve the demanding set of U.S. objectives in a negotiation of this type, it is essential that U.S. negotiators have adequate flexibility and not be forced to meet artificial deadlines. It is for this reason that we favor a 10-year grant of authority, about which I will comment later.

Fast-Track" Procedures

The fast-track procedures that we set up under the 1974 Trade Act are essential for a satisfactory outcome, and they should not be conditioned on any pre-determined results. Also, the procedures for access to the fast-track authority should not be made unduly complicated and result in increased uncertainty by adding new preconditions. To achieve the many important U.S. objectives, U.S. negotiators must have flexibility if they are to reconcile the positions of different countries to get results that can be approved by all parties. I know, from my own experience as a negotiator, how important this is. Countries will not make bottom-line concessions to negotiators if they know that they will have to renegotiate point-by-point with Congress. Rigidly pre-defined objectives, or procedures which create doubt that the agreement struck is the last word, drastically limit the bargaining power that negotiators have.

To adjust to the different type of negotiation that I've outlined above, it is important that such fast-track procedures be made applicable to results of negotiations as they are achieved, without waiting for a final "package" of agreements. Some agreements may be concluded in a short period. Some of these, as, for example, a stronger dispute settlement process, increased discipline over agricultural subsidies which distort trade or a new arrangement to enhance intellectual property protection, are of such importance to the strengthening of the GATT system against the dangerous pressures now eroding it that they should not be delayed if agreement has been reached. Certainly it is in the U.S. interest to begin strengthening GATT disciplines as fast as possible. In this type of negotiation there is nothing to be gained by delaying implementation of such agreements while other negotiations continue.

The U.S. Council is, of course, concerned that only agreements that are truly beneficial to U.S. interests be approved. But the most efficient way to ensure this result is not to reject an agreement in the eleventh hour on the basis of one or two deficiencies and to send it back for renegotiation, which generally consigns it to oblivion with benefits for none. Rather, Congress ought to be closely involved step-by-step with U.S. negotiators from the beginning of the process. I can assure you, Mr. Chairman, that the portion of the U.S. business community which the U.S. Council represents is already actively engaged in developing recommendations for U.S. objectives, and we warmly welcome Ambassador Yeutter's commitment to active consultation with the private sector.

Thus, Congressional concerns about achievement of U.S. objectives must be factored into negotiations as they develop, through adequate procedures for consultation between U.S. negotiators and key Congressional committees. There is no substitute for having selected House Ways & Means Committee Members designated as responsible for oversight and principal points of contact for U.S. negotiators. By the same token, these people must be able to speak authoritatively for their colleagues and give negotiators the guidance and support they need. Ultimately, of course, Congressional control is maintained through the requirement for approval of the results by means of the fast-track procedure.

Conditional Most-Favored-Nation Treatment

The President should be authorized to negotiate conditional MFN agreements in which parts or all of the agreements would apply only to participants. But in most circumstances, unconditional MFN application will be the appropriate principle, and the President should not be required by law to extend all benefits only on a conditional MFN basis.

Similarly, authority requiring strict sectoral reciprocity should be avoided, although Congress might well encourage negotiations of sectoral agreements where the extent of liberalization may be greater than could be achieved through application offormulas that apply to all products.

Duration of Authority

Congress should grant negotiating authority with fast-track procedures for a period of ten years.

Our trading partners will take negotiations more seriously if there is a Congressional declaration with broad coverage and a sufficient period of time. They will be reluctant to engage in serious bargaining unless they perceive that Congress has endorsed the process for a sufficient time in the future to make credible efforts to negotiate agreements in complicated areas. The results of these negotiations are likely to be a series of mini-packages that are self-contained or only loosely linked to a final, overall agreement. Therefore, the value of a deadline to pressure agreement on a single package is likely to be considerably reduced, and, indeed, could be counterproductive. It might, for example, convey the impression to our trading partners that the U.S. will be forced to accept whatever is on offer at the end of the Uruguay Round in 1992 if the authority is too closely tied to that event. It would be far better if our negotiators can show that their authority is not dependent on meeting such a deadline, and thus that their bargaining power is not a hostage to the negotiations clock.

Objectives

The agenda for the round worked out at Punta del Este is a comprehensive listing of the issues which our members believe must be addressed in the new round. Therefore, it would not appear necessary to include in the legislation specific points on the negotiating agenda and excessive specificity will make acceptable bargains less likely. It may be useful for Congress to record U.S. objectives in general terms as long as this is done without limiting the flexibility of negotiators or conditioning the fast-track procedure on any predefined results.

Bilateral Authority

Negotiating authority and fast-track procedures should be extended to bilateral trade agreements. This is important because it is in the U.S. interest to pursue GATT-compatible bilateral agreements simultaneously with multilateral negotiations so that more comprehensive market-opening or rule-enforcing agreements than may initially be possible with all GATT partners can be negotiated with those who wish and implemented as rapidly as possible.

In conclusion, Mr. Chairman, the U.S. Council urges the Congress to pass expeditiously the type of negotiating authority we have recommended so that the U.S. can exercise its leadership role in pursuit of U.S. business interests to reform and strengthen the GATT disciplines. The stakes are high. The GATT system is eroding. If protectionist pressures cannot be contained in the short term and if negotiations cannot revitalize the GATT soon, confidence in the system may be completely forfeited, leading to the result that trade restrictions again become the dominant feature of the trade environment, as they were in the interwar period, with potentially disastrous economic and political consequences for the U.S. and the world.

February 26, 1987

ATTACHMENT I

United States Council for International Business
A Strategy for Enhancing U.S. Competitiveness

The United States Council for International Business welcomes the renewed attention of the Administration, the Congress, and the public to the issue highlighted by the Young Commission: national competitiveness. While many American companies are individually highly competitive, the Council is concerned about the competitiveness of the U.S. economy as a whole, in the world market.

Though the primary responsibility for improving competitiveness rests with the private sector, the Council believes that the highest economic policy priority for the Administration and the 100th Congress in 1987 should be to implement policies and legislative programs aimed at enhancing the competitiveness of the U.S. economy as a whole, in an open global economic system. Domestically, these include fiscal and monetary policies, trade policies, and other Government microeconomic policies and actions, such as those affecting education, labor mobility, and R&D. Internationally, greater economic policy coordination and exchange rate cooperation, a forceful and concerted policy to deal with indebtness, and an enhanced and more open trading system will add to the greater competitiveness of the United States.

In its December 31, 1985 statement on international economic policy, the Council encouraged the U.S. Government to address, in concert with our trading partners, the urgent and interrelated issues of the strong dollar, trade protectionism, and the international debt problem.

Some progress has been made on these problems but major imbalances in the world economy persist. More progress will have to be made to redress these imbalances before the severe adjustments that American business has undergone in the last few years will yield significant results in terms of improved external accounts. The Council therefore believes that all elements of policy must be brought to bear on the issue of U.S. competitiveness. No single element referred to under the rubric of competitiveness can be a panacea for the nation's industrial, financial or trade problems.

The United States Council for International Business is above all convinced that the United States must continue to shun market-distorting, and protectionist measures associated with so-called industrial policy strategies, but should pursue policies and programs that will enhance the openess and efficiency of domestic and international markets.

The U.S. Council recognizes that the business community itself has a major continuing role to play in improving its own competitiveness. Much of U.S. industry has responded to the sharp swings in economic conditions of the first half of this decade by undertaking painful restructuring. However, much must continue to be done. The Council is convinced that the business community will achieve the necessary global competitiveness as long as the right policies and legislation ensure open markets with a minimum of distortions both at home and abroad.

The U.S. Council has long urged an integrated approach. Building on its past policy statements, it recommends the following measures that would together constitute a comprehensive strategy to improve U.S. competitiveness:

I. Improve the Macroeconomic Climate

The most important condition for U.S. competitiveness lies in effective action to redress the balance between savings and the uses of those savings (i.e., investment, and financing the government's deficit). If domestic savings are not adequate to cover the calls on these savings, the U.S. will have to continue to rely on foreign capital imports, which would entail a deficit in the U.S. current account and trade balances and which may require raising interest rates. Both high interest rates and the high trade deficit work against U.S. competitiveness. To increase the savings rate significantly, as history has shown, is difficult. To reduce investment would lower new growth and job creation and be anticompetitive. The only remaining option is to reduce the claim of the budget deficit on national savings.

The U.S. Council for International Business believes that the U.S. Government in 1987 should:

- -- Continue to work towards reducing the claims of the budget deficit on national savings, so as to move towards an external balance, and achieve lower interest rates, and the additional domestic private investment needed to create new jobs and make industry more competitive. This reduction should preferably be achieved on the expenditure side. It would be self- defeating to achieve budget deficit reduction through higher taxes on business, as this would only discourage new investment.

- -- Review the 1986 Tax Act to determine whether, without upsetting the basic thrust of that Act, supplementary measures may be taken to stimulate savings and eliminate the competitive disadvantages to U.S. business operating abroad, which the Act created or left untouched. To reverse the competitive disadvantages created in the Act, Congress should address the unwarranted expansion of the Subpart F provisions (for example, the financial services and shipping industries), the unnecessary fragmentation of the foreign tax credit limitation, and the inequitable requirements for group allocations and apportionments of expenses.

The second important macroeconomic condition for U.S. competitiveness lies in greater stability of exchange rates at sustainable levels within an open system of international trade and capital movements. Exchange rates of the principal currency countries have moved significantly in the right direction, but some further adjustments may be necessary. More fundamentally, the principal currency governments should build on the Tokyo Summit Agreement using the IMF and OECD to enhance cooperation on the economic fundamentals needed to assure greater stability of exchange rates. In working toward this goal, the U.S. Government should continue to:

- -- Stress the need for mutually consistent, growth-oriented domestic economic policies in the main countries.

- -- Coordinate with other countries their intervention in currency markets when needed to counter disorderly market conditions.

- -- Intensify bilateral and multilateral efforts to deal with situations in which governments set their exchange rates to thwart market forces or to achieve unwarranted surpluses at the expense of others.

- -- Work to strengthen the international institutional framework, making full use of all existing multilateral institutions, to influence government policies.

The third macroeconomic condition of enhancing U.S. competitiveness lies in further progress in managing the international debt problem in a context of growth and adjustment. Progress has been made under the Baker initiative to provide additional financing for investment, economic restructuring and debt management. More needs to be done to assure its success. To maintain global demand and facilitate economic adjustment in the context of the debt burden, the U.S. Government in cooperation with other developed nations should:

- -- Approve additional lending to developing countries when conditions of the World Bank and IMF are met.

- -- Stand ready, where warranted, to increase the capital of the international lending institutions enabling them to increase their lending on a conditional basis.

- -- Work with commercial banks in arranging appropriate support of debtor country policies approved by the World Bank and IMF.

- -- Urge those countries with massive current account surpluses to increase their overall flow of financial resources to developing countries.

-- Seek to improve the institutional framework for influencing domestic policies in the developing countries in the direction of sound private-sector led growth that will provide the necessary climate of confidence for domestic and foreign investment.

II. Pursue A Market-Opening, Rule-Enforcing Trade Policy

The United States must build on the progress made in the past year to launch the Uruguay Round of multilateral trade negotiations, the bilateral negotiations with Canada, and market-opening actions and negotiations with other countries. Recognizing that trade legislation is an important component of any competitiveness enhancing program, albeit not the only one, the Administration and Congress should collaborate on a Trade Bill that will:

-- Provide broad flexible authority, with fast track procedures, for multilateral trade negotiations that would improve GATT discipline through a GATT safeguards code, dispute settlement mechanism and strengthened GATT Secretariat; remove barriers stemming from a variety of national policies and practices; liberalize trade by exchanging concessions that would provide opportunities for U.S. exports; extend GATT rules to new areas such as services, intellectual property and foreign investment; as well as establishing GATT discipline over agriculture.

-- Require the Administration to continue with efforts to improve the functioning of the international monetary system.

-- Amend U.S. trade and other laws to achieve enhanced protection of intellectual property rights (including U.S. adherence to the Berne Convention).

-- Add certain authorities to the President's choice of policies to deal with unfair trade practices and fair import competition, as well as change the anti-dumping law so it can be applied meaningfully to goods from non-market economies.

In the process of legislating the above authorities, Congress should refrain from seeking:

-- The bilateral balancing of trade or current accounts, which would undermine the entire multilateral economic system.

-- To transfer authority from the President, who must retain the responsibility for taking trade decisions that would restrict U.S. imports in light of his view of the national interest. Except where presently provided in the countervailing duty or anti-dumping laws, that responsibility should remain a discretionary decision of the President.

-- To impose arbitrarily rigid time limits or procedures that preclude the use of remedies by negotiation in trade cases.

-- To tax provisions in a trade bill that would impose tax restrictions on U.S. companies producing overseas for U.S. markets (the so-called "runaway plant" provision that has surfaced from time to time over the last decade or so in proposed trade legislation).

The Administration should, in connection with its leadership on the Trade Bill, update its statement on trade policy by:

- Clarifying U.S. objectives and positions in the new trade round, including how it intends to fulfill the commitment on standstill and rollback.
- Expressing the determination of the U.S. to press for early implementation of the Tokyo Summit mandate to deal effectively with the domestic and international distortions created by the agriculture policies of the U.S. and other major producers.
- Indicating the Executive Branch's approach to the pursuit of bilateral trade liberalizing negotiations with key U.S. trade-partners, including Canada, Japan, and others under Section 301.

III. Implement Other Measures to Improve Competitiveness

In addition to macroeconomic and trade policies, business, labor, and government should act responsibly to improve the other basic determinants of our economy's competitiveness. Business and labor need to cooperate to assure that the best management and production practices are developed and applied on a timely basis to create and maintain a competitive edge. Government needs to create, through leadership, legislation and administration, the domestic and international conditions within which competitive enterprises can develop and flourish.

To improve overall national competitiveness in world markets, legislative and administrative actions are needed to remove obstacles and disincentives to the ability of U.S. business to export or compete internationally. These include:

- Reforming antitrust laws to recognize that competition takes place in global markets.
- Amending the Foreign Corrupt Practices Act to provide greater clarity and certainty.
- Providing adequate resources to the Ex-Im Bank to enable it to compete effectively with foreign credit suppliers, if it proves impossible to reach agreement on phasing out export subsidies.
- Streamlining the administration of the Export Administration Act, providing the removal of unnecessary or marginally effective restrictions on exports of U.S. goods and technology, and enact new legislation assuring that existing contracts for exports of goods and services (as well as agricultural products) will be honored if new foreign policy export controls are imposed, unless fundamental national security objectives are involved.
- Removing tax disincentives for the transfer of technology abroad (to related entities) that were enacted in the 1984 Act and the 1986 Act ("superroyalty").

In addition to the above actions that affect the competitiveness of U.S. business in its international operations, there are a number of domestic social and economic actions necessary to improve overall competitiveness, including:

-- Continuing action to relieve the burden on business and industry along the lines of the Vice Presidential Task Force on Regulatory Relief.

-- Action to promote workforce mobility through such actions as job training programs (e.g., the proposals concerning displaced workers in the Presidents budget) to emphasize retraining and relocation assistance, and to encourage the portability of pensions. In particular, the job training provisions of Trade Adjustment and other legislation should be consolidated and enhanced. These programs can help to facilitate structural adjustment required to meet new competitive conditions (whether arising from imports or other factors). A trained flexible and mobile U.S. workforce is one of our society's greatest resources. Strengthening that flexiblity is the best way to assure rising real incomes for the future.

-- Strengthening programs administered by the Department of Education that focus on the need for improvements in basic education (to prepare the future labor force to be more adaptable to the needs of a technologically advanced economy). Programs should also be improved by the local, state and national governments to assure both the quality of, and access to, the higher education required if the U.S. is to remain at the leading edge of advanced technology. Several of the Young Commission recommendations address these issues without requiring major new Federal financing. In particular, private industry should be encouraged to expand and strengthen its cooperation with the education system at all levels.

-- Federally funded programs of R&D should be improved to assure that regulations and procedures actively promote future commercialization and not create impediments to it. Action is needed to assure better coordination among government funded programs so that the results of research are transferred to commercial users and strengthen competitiveness.

-- The enactment of legislation along the lines of Section 922 of S.1860 that would serve to heighten awareness of how policies and legislative proposals developed to meet other national objectives may also impact for good or ill on U.S. international trade and competitiveness. The United States Council supported such trade impact statements during the last session of Congress.

This array of legislative and administative measures would complement and reinforce the ability of American business to respond effectively to the opportunities created by sound macroeconomic and trade policies.

February 3, 1987

ATTACHMENT II

United States Council Recommendations on H.R. 3

Trade Barriers and Distortions of Trade

Section 301 should remain a broad, discretionary statute to permit the President adequate flexibility to pursue international negotiations to remove foreign barriers or trade-distorting practices so as to expand U.S. export opportunities. Congress should encourage such negotiations, but should refrain from requiring by law (a) that investigations must be initiated for a particular kind or class of practices, or (b) that action must be taken against another country, whether because an arbitrary time limit has expired without positive result or because some other requirement defined in the law has not been met. (The new Section 311 in the House bill is an example of both.) We also oppose transferring decision-making authority from the President, who must retain the responsibility for taking such decisions in the light of his view of the national interest. That responsibility should remain a discretionary decision of the President elected by the people, not a ministerial function delegated by Congress to an appointee.

The Council is also opposed to a requirement that the President must retaliate against actions found to be unjustifiable, though we would favor a sense-of-Congress statement that retaliation is an appropriate component of action to be taken if a GATT panel has found a country in violation of its GATT obligations and such country has failed to take effective remedial action. The Council also favors adding to the remedy options available to the President the withdrawal of beneficiary country or "eligible article" status under GSP. Finally the Council opposes provisions that would require the concurrence of the petitioner or affected industry in any settlement of a case by negotiated agreement. An agreement reached reflecting the national interest should not be subject to veto by one class of persons.

Relief from Injury Caused by Import Competition

The Council believes that current law conforms with U.S. international obligations concerning action taken to provide temporary relief from fair import competition. The law also has worked well to provide the necessary balance among the interests of those seeking relief and others in the U.S. economy (both producers and consumers) who would have to bear the costs of the relief granted. We believe that it is important to retain this balance. Thus the Council opposes amendments that would reduce the causation standard (from "substantial" to "a" cause), or that would restrict the President's discretion about providing relief (e.g., as proposed in Section 305 of Title III of S.1860 entitled "Industry Assessment and Competitiveness Strategy"), as well as amendements that would remove the discretion of the ITC to recommend adjustment assistance as an alternative to import relief. We would, however, support adding the to President's relief options proposals for accelerated action under the antidumping and countervailing duty acts, if there is reason to believe that violations of these laws have occurred; antitrust exemptions, and multilateral negotiations to address problems not susceptible to unilateral solutions.

The Council also believes that the U.S. should refrain from changing U.S. law in ways that could create a conflict with our GATT obligations until completion of expected negotiations on a new safeguards Code in GATT. Thus, we oppose the proposal that the President be required to impose temporary import relief, if he finds that critical circumstances exist and before the ITC has found the extent of injury (if any).

Negotiating Authority

A Council statement of February 25, 1986, sent to members of Senate Finance and House Ways and Means Comittees on March 18, 1986, urges Congress to grant Presidential negotiating authority for ten years with fast-track procedures, including application of fast-track procedures to agreements as concluded, without waiting for the final package of agreements. The Council supports inclusion of authority for bilateral negotiations with fast-track procedures, and while it endorses Congressional identification of negotiating objectives, it opposes preconditions that would limit the flexibility of negotiators or the use of fast-track procedures.

Exchange Rates and Debt

Any exchange rate legislation should endorse as the principal U.S. international economic policy objective the creation of conditions for greater stability of exchange rates at sustainable levels within an open system of international trade and capital movements.

The Council believes that the agreement to enhance the surveillance process reached at the Tokyo Summit effectively meets the objective of negotiations among the G-5. The Council recommends that legislation require the President and the Chairman of the Federal Reserve to report after each surveillance consultation agreed upon at the Tokyo Summit on recent exchange market developments and lay out U.S. policy intentions. The Council opposes a strategic exchange reserve as being unneeded and destabilizing. Authority already exists for the Secretary of the Treasury to intervene in currency markets. The Council supports coordinated intervention only in cases when to do so would be helpful in complementing fundamental economic policies and in countering disorderly market conditions.

NonMarket Economies

The Council favors a change in U.S. law that would eliminate the requirement that Commerce use "constructed value" to determine foreign market value in cases involving dumping by state-controlled economies. The law should place the burden of proof on the non-market economy country (or its enterprises) to show that they are the lowest-cost producer or that they should be judged as market-oriented and sufficiently independent of state control as to justify treatment under the normal procedures. If such cannot be demonstrated, a finding of injury (perhaps at a level between "material" and "serious") should be sufficient to require action (i.e., increased duties).

Intellectual Property Rights

The United States Council supports the elimination of the requirement to prove "injury" in intellectual property cases. By eliminating the requirement to prove other injury besides patent, trademark or copyright infringement, the bill would make Section 337 a more effective remedy for U.S. manufacturers. We support eliminating the requirement that the ITC must find the U.S. industry to be "efficiently and economically operated." Newly established, technologically-based industries may have trouble proving efficiency. "Industry" should be defined to include investments in exploitation of intellectual property; and a 90-day deadline should be established as the rule in most cases for the ITC to decide on temporary exclusion orders. We also support provisions of the bill on process patent amendments, that would render it unlawful to import into, or sell within, the United States a product that is "directly made" by a patented process.

The Council has previously registered its support for adherence to the Berne Convention on copyrights and for legislation to implement it. We are also opposed to extension of the manufacturing clause.

Other Proposals

-- Telecommunications Trade

The U.S. Council supports the objective of reducing barriers and favors bilateral talks to prepare a basis for a multilateral solution. However, we oppose mandatory retaliation provisions and strict sectoral reciprocity.

-- Natural Resources Subsidies

The Council opposes unilateral change in rules and favors stricter application of current U.S. laws and international negotiations to establish new multilateral definitions of countervailable subsidies.

-- Import Surcharge Proposals

New Section 311 of the new House bill is an example. The Council opposes proposals that would impose either a targeted or general surcharge if greater access or a more favorable trade balance is not achieved.

-- Amendments to AntiDumping and Countervailing Duty Laws

The Council opposes changes in U.S. laws which would unilaterally alter U.S. obligations under the GATT and relevant Codes. In particular, we oppose enactment of measures which would create a right of private action in dumping cases that would add remedies not authorized by current GATT rules. However, we favor a mandate to U.S. negotiators to seek changes in the Antidumping Code to deal with "diversionary dumping," and in the Subsidies Code to deal with "targeting" practices.

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2/23/87

Chairman GIBBONS. Thank you, Mr. Walker.

Let us go next to Mr. Moore.

Mr. MOORE. Mr. Chairman, with your permission, I would like Mr. Nehmer to go next and I will follow——

Chairman GIBBONS. Sure. Any way you all want to do it is fine with us.

Mr. NEHMER. Thank you, Mr. Chairman.

Chairman GIBBONS. Stan, welcome again.

STATEMENT OF STANLEY NEHMER, PRESIDENT, ECONOMIC CONSULTING SERVICES, INC., ON BEHALF OF AMERICAN FIBER, TEXTILE, APPAREL COALITION; AMERICAN IRON & STEEL INSTITUTE; GROUP OF 33; LEATHER PRODUCTS COALITION; RUBBER & PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION; AND SPECIALTY STEEL INDUSTRY OF THE UNITED STATES, ACCOMPANIED BY FRANK FENTON, VICE PRESIDENT, AMERICAN IRON & STEEL INSTITUTE AND FAWN EVENSON, VICE PRESIDENT, FOOTWEAR INDUSTRIES OF AMERICA

Mr. NEHMER. Thank you, Mr. Chairman. It is certainly good to be here again, sir, and my colleagues and I appreciate the opportunity to be here.

We are here on behalf of seven separate entities representing some 50 separate organizations.

I would like to introduce my colleagues: Carlos Moore, executive vice president, American Textile Manufacturers Institute and chairman of AFTAC to my immediate left. To his left is Frank Fenton, vice president of the American Iron & Steel Institute, and to his left is Fawn Evenson, vice president of Footwear Industries of America.

Mr. Moore and I will have brief statements to make. We will all be available to answer questions.

The list of the organizations on whose behalf we are speaking appears in my testimony and we would ask that both Mr. Moore's statement and mine in full be put into the record.

Chairman GIBBONS. They certainly will.

Mr. NEHMER. Thank you, sir.

The industries represented by these organizations are located throughout the 50 United States and employ upward of some 3 million people. These organizations oppose granting the President authority to cut tariffs on import sensitive articles as part of a new round of trade negotiations. Section 153 of H.R. 3 would grant the President such authority.

We take this position because of two fundamental reasons. First, American manufacturing industries, including all of the industries represented here today are considerably worse off today than they were prior to the Tokyo round, the last round of trade negotiations concluded in 1979. In aggregate terms, there has been a loss of some one million jobs in manufacturing since 1980. The trade deficit which increased from $36 billion in 1980 to $170 billion in 1986, attesting to the seriously deteriorating position of U.S. manufacturing industries in the U.S. economy.

Second, many of these industries have already paid the price for a trading regime that has been steadily liberalized over several successive trade rounds. Our markets, among the largest and most open in the world, receive a disproportionate share of world imports, particularly from the developing countries. These are the same developing countries that will be the focus of the new trade round which has as a major goal the opening up of developing country markets to U.S. services and U.S. investments.

Our industries, sir, understand all too well what that means. The developing countries will be exacting a price for opening up their markets, and that price will be improved access to our markets for their exports of the items that they produce, and they produce well.

Textiles, apparel, footwear, carbon steel, specialty steel, copper and brass fabricated products, bicycles, lead, zinc, luggage, handbags, work gloves, chemicals, and so on and so forth.

This improved access translates into U.S. tariff reductions on items that these countries already export to us in huge quantities, often on a subsidized or dumped basis, and we say must we concede still more of our market to these countries in order that U.S. market-opening objectives for U.S. services and investment opportunities are met?

Considering the plight of U.S. manufacturing, we do not agree that the President should have authority to cut tariffs. However, if it is granted at all, it should be limited to non-import-sensitive items, and there already exists a Government standard for making this determination.

The standard is whether or not a product is eligible for duty-free treatment under the Generalized System of Preferences. If the Government had already made a determination that a product is too import-sensitive to be on the GSP preference list, then such products should not be subject to tariff cuts in a new trade round.

It makes no economic sense to say a product is import-sensitive and cannot be included in the GSP program, and then cut the tariff on the same product, perhaps to zero, as provided under GSP.

Even with this limitation, U.S. negotiators would still have a substantial number of products on which to negotiate, and the President would have the authority he says he needs to enter into a new trade round.

We do not mean to suggest, that just because a product is not eligible for GSP, that it is not import-sensitive. There are probably many products that are currently eligible for GSP that are also import-sensitive, and thus, should not have their tariffs cut either.

At the very least, there should be a limit on tariff cuts on such products, a level well below that permitted in the Tokyo round. In this regard, we support the proposal of the Synthetic Organic Chemical Industry to limit tariff reductions for import-sensitive products that are eligible for GSP treatment.

And finally, H.R. 3 would give the President authority to cut tariffs on all products regardless of import sensitivity but require, unlike in past trade rounds, that cuts on products considered to be import-sensitive, as defined by their GSP eligibility status, come back to Congress for approval.

While this may appear to be an adequate safeguard against unjustified tariff cuts on highly import-sensitive products, it gives those of us who have participated in such exercises in the past little comfort.

The procedure by which these cuts will be brought back to Congress affords little opportunity to redress problem areas. Such cuts are brought together with numerous other trade agreements, all bundled together, and the vote under the fast-track procedures of section 151 is either up, or down, with no amendments allowed.

This is not a procedure that inspires confidence on our part. And now, Mr. Chairman, I would like to defer to Mr. Carlos Moore.

[The prepared statement follows:]

STATEMENT OF THE

American Fiber, Textile, Apparel Coalition (AFTAC)*
American Iron and Steel Institute
Group of 33*
Leather Products Coalition*
Rubber & Plastic Footwear Manufacturers Association
Specialty Steel Industry of the United States

This statement in opposition to granting the President unqualified tariff cutting authority on import sensitive articles is made on behalf of the following organizations:

- AMERICAN FIBER, TEXTILE, APPAREL COALITION (AFTAC)
  - Amalgamated Clothing and Textile Workers Union, AFL-CIO
  - American Apparel Manufacturers Association
  - American Textile Manufacturers Institute
  - American Yarn Spinners Association
  - Carpet and Rug Institute
  - Clothing Manufacturers Association of U.S.A.
  - Industrial Fabrics Association International
  - International Ladies' Garment Workers' Union, AFL-CIO
  - Knitted Textile Association
  - Luggage and Leather Goods Manufacturers of America
  - Man-Made Fiber Producers Association
  - National Association of Uniform Manufacturers
  - National Cotton Council
  - National Knitwear & Sportswear Association
  - National Knitwear Manufacturers Association
  - National Wool Growers Association
  - Neckwear Association of America
  - Northern Textile Association
  - Textile Distributors Association
  - Work Glove Manufacturers Association

- AMERICAN IRON AND STEEL INSTITUTE

- GROUP OF 33
  - Amalgamated Clothing and Textile Workers Union, AFL-CIO
  - American Apparel Manufacturers Association
  - American Brush Manufacturers Association
  - American Federation of Fishermen
  - American Mushroom Institute
  - American Pipe Fittings Association
  - American Textile Machinery Association
  - American Textile Manufacturers Institute
  - American Yarn Spinners Association
  - Association of Synthetic Yarn Manufacturers
  - Bicycle Manufacturers Association of America Inc.
  - Cast Iron Soil Pipe Institute
  - Clothing Manufacturers Association
  - Copper and Brass Fabricators Council, Inc.
  - Footwear Industries of America, Inc.
  - Industrial Union Department, AFL-CIO
  - International Ladies' Garment Workers' Union, AFL-CIO
  - International Leather Goods, Plastics & Novelty Workers Union, AFL-CIO
  - Lead-Zinc Producers Committee
  - Luggage & Leather Goods Manufacturers of America, Inc.
  - Man-Made Fiber Producers Association
  - National Association of Chain Manufacturers
  - National Association of Hosiery Manufacturers
  - National Cotton Council
  - National Knitwear and Sportswear Association
  - National Knitwear Manufacturers Association
  - Northern Textile Association
  - Outdoor Power Equipment Institute
  - Scale Manufacturers Association, Inc.
  - Synthetic Organic Chemical Manufacturers Association
  - Textile Distributors Association
  - Valve Manufacturers Association
  - Work Glove Manufacturers Association

- LEATHER PRODUCTS COALITION
  - Amalgamated Clothing & Textile Workers Union, AFL-CIO
  - Footwear Industries of America, Inc.
  - International Leather Goods, Plastics & Novelty Workers' Union, AFL-CIO
  - Luggage & Leather Goods Manufacturers of America, Inc.
  - Work Glove Manufacturers Association
- RUBBER & PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION
- SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

The industries represented by these organizations are located throughout the United States and employ upwards of some 3 million people.

These organizations oppose granting the President authority to cut tariffs on import-sensitive articles as part of a new round of trade negotiations. Section 153 of H.R. 3 would grant the President such authority.

We take this position because of two fundamental reasons. First, American manufacturing industries, including all of the industries represented by these organizations, are considerably worse off today than they were prior to the Tokyo Round, the last round of trade negotiations, which concluded in 1979. In aggregate terms, the loss of some 1 million jobs in manufacturing since 1980 and the increasing trade deficit, which increased from $36 billion in 1980 to $170 billion in 1986 clearly attest to the seriously deteriorating position of U.S. manufacturing industries in the U.S. economy.

Second, many of these industries have already paid the price for a trading regime that has been steadily liberalized over several successive trade rounds. Our markets, among the largest and most open in the world, receive a disproportionate share of world imports, particularly from the developing countries. These are the same developing countries that will be the focus of the new trade round, which has as a major goal the opening up of developing country markets to U.S. services and U.S. investment. Our industries understand all too well what that means. The developing countries will be exacting a price for opening up their markets and that price will be improved access to our markets for their exports of textiles, apparel, footwear, carbon and specialty steel, copper and brass fabricated products, bicycles, lead, zinc, luggage, handbags, work gloves, chemicals, etc. This improved access translates into U.S. tariff reductions on items that these countries already export to us in huge quantities, often on a subsidized or dumped basis. Must we concede still more of our market to these countries in order that U.S. market-opening objectives for U.S. services and investment opportunities are met?

The industries represented here today -- and we suspect many others as well -- do not want to be used as pawns for U.S. negotiating objectives in other areas. Our tariffs should not be the price paid to open up developing country markets to the products or services of other U.S. industries. It is bad enough that our industries have been repeatedly traded off for U.S. foreign policy objectives in these countries. As an example, last year Turkey openly requested wider access to the U.S. textile market in return for renewal of U.S.-leased military bases there. Continued access to the U.S. market should be sufficient reason for these countries to open their doors to our goods and services.

This access is easily measured. In 1986, a substantial portion of the U.S. trade deficit was with developing countries. We had a $14.3 billion deficit with Taiwan, $5.9 billion with Hong Kong, $4.9 billion with Mexico, $2.9 billion with Brazil, $9.3 billion with Korea, and so on. Trade in the products whose industries are represented here today accounts for a substantial portion of these deficits. These are enormously large trade imbalances and we believe our trade negotiators should not ignore their existence. Our trade negotiators should instead tie continued access to the U.S. market to these countries' demonstrated willingness to open up their markets to more U.S. goods and services. To do otherwise is to give the developing countries a free ride while United States manufacturing industries take it on the chin again.

Since enactment of the Reciprocal Trade Agreements Act of 1934, Congress periodically has delegated authority to the President to negotiate and to proclaim reductions in tariffs under reciprocal trade agreements, without requiring further Congressional action. The last time Congress granted this authority was as part of the Trade Act of 1974 leading to the Tokyo Round that concluded in 1979. Each round has been preceded by pronouncements by economic theorists that point to the growth in world trade stemming directly from the liberalizing effects of successive world trade rounds and in turn how this growth benefits U.S. commerce. There certainly has been an increase in the number of goods traded in the world since the last trade round; it seems, at least to these industries, that most of the increase in trade is destined for our shores. With an overall trade deficit of $170 billion in 1986, there are probably very few American manufacturing industries that are better off today than they were before the last trade round -- a trade round that resulted in many U.S. products receiving the maximum allowable 60 percent tariff cut, and an average of 32 percent tariff reduction on industrial products.

Great optimism had been expressed that the U.S. trade deficit would be reduced as a result of the decline in the strength of the U.S. dollar. While some imports have become less competitive because of exchange rate realignment, this is simply not the case for many of the products of concern to the organizations represented here today. Imports of many of these products have continued to increase despite the falling dollar. In particular, imports from the Newly Industrializing Countries (NICs), which supply the United States with such large volumes of imports, have continued to grow; since the currencies of so many NICs are tied to the U.S. dollar, there has not been a corresponding decline in the dollar against these currencies. Indeed, U.S. imports of many of the products in question have continued to rise.

Similar optimism has been expressed in forecasting job growth in the coming months and years. To the extent these expectations are realized, however, little benefit will accrue to the workers in the industries represented here today. Labor in many of these industries is not very mobile, for both economic and social reasons. It is unlikely that an unemployed garment worker in New York City will relocate to Seattle to assemble jet aircraft; there is simply a gross mismatch of needed skills. It is also important to ask just what kind of jobs will be created in the near future. Most predictions are that these new jobs will not be in manufacturing; more likely they will be service industry jobs which often are lower paid than manufacturing jobs. It is difficult to pin much hope on this prospect.

Considering the plight of U.S. manufacturing, we do not agree that the President should have authority to cut tariffs; however, if it is granted at all, it should be limited to non-import sensitive items and there already exists a Government standard for making this determination. The standard is whether or not a product is eligible for duty-free treatment under the Generalized System of Preferences (GSP) Program. If the Government had already made a determination that a product is import-sensitive enough to be on the GSP Preference List, either by a specific exclusion in the statute or by administrative procedure, then such product should not be subject to tariff cuts in a new trade round. It makes no economic sense to say a product is import sensitive and cannot be included in the GSP, and then cut the tariff on the same product perhaps to zero as provided under GSP. Even with this limitation, U.S. negotiators would still have a substantial number of products on which to negotiate and the President would have the authority he says he needs to enter into a new trade round.

We do not mean to suggest that just because a product is not eligible for GSP that it is not import sensitive. There are probably many products that are currently eligible for GSP that are also import sensitive and thus should not have their tariffs cut. At the very least, there should be a limit on tariff cuts on such products, a level well below that permitted in the Tokyo Round. In this regard we support the proposal of the synthetic organic chemical industry to limit tariff reductions for import-sensitive products that are eligible for GSP treatment.

H.R. 3 would give the President authority to cut tariffs on all products, regardless of import sensitivity, but require, unlike in past trade rounds, that cuts on products considered to be import sensitive, as defined by their GSP eligibility status, come back to Congress for approval. While this may appear to be an adequate safeguard against unjustified tariff cuts on highly import sensitive products, it gives those of us who have participated in such exercises in the past little comfort. The procedure by which these cuts will be brought back to Congress affords little opportunity to redress problem areas. Such cuts are brought back with numerous other trade agreements, all bundled together, and the vote under the fast track procedures of Section 151 is either up or down, with no amendments allowed. This is not a procedure that inspires confidence on our part.

The Israeli-U.S. Free Trade Area agreement provides a good example of how this procedure actually works. Under a provision in the Israeli agreement, staging requirements on the tariff cuts were brought back to Congress for review. Despite assurances to the Congress by Ambassador Brock that tariff cuts on certain import sensitive textile and leather products would be phased in more gradually than for other products, the Administration completely ignored its commitment about a gradual staging on many textile and leather product tariffs. In fact, tariffs on some products were phased out immediately. When we protested the staging of the cuts, we were told that to change any of the staging requirements would upset the agreement and it just could not be done. Thus, provisions in H.R. 3 for Congressional review and approval under the fast-track, while better than nothing, are not very meaningful as a safeguard for import sensitive industries.

Conclusion

In summary, the industries represented here today would clearly be hurt by further duty cuts, which would make the U.S. market, with relatively few non-tariff barriers, an even more attractive market. More important, however, these tariffs, no matter how small, provide some degree of insulation against imports. To reduce these tariffs would be catastrophic to certain domestic producers and workers; duties make a substantial difference to these industries.

We think the proposal to give the President authority to cut tariffs on these products is coming at the worst possible time insofar as these particular industries are concerned. If it is granted, more plants will close, or go off-shore to compete. The bottom line will be fewer U.S. manufacturing jobs and less productive capacity in this country. Thus, we urge the Committee not to report a bill that would grant the President authority to cut tariffs on products not eligible for GSP treatment.

STATEMENT OF CARLOS MOORE, CHAIRMAN, AMERICAN FIBER, TEXTILE, APPAREL COALITION AND EXECUTIVE VICE PRESIDENT, AMERICAN TEXTILE MANUFACTURERS INSTITUTE

Mr. MOORE. Mr. Chairman, my name is Carlos Moore. I am chairman of the American Fiber, Textile, Apparel Coalition, which is made up of 20 organizations representing industries and labor unions involved in producing textile fibers, fabrics, apparel, and other textile products throughout the United States.

I appreciate the opportunity to appear here on their behalf. I am appearing to express the opposition of our coalition to the tariff-cutting provision in H.R. 3.

Since we participated in hearings last year on H.R. 4800, the import situation has only worsened for the U.S. textile and apparel industry.

We believe that a grant of Presidential authority to cut tariffs on these products can only result in further injury to the U.S. fiber, textile, apparel industry and its workers.

During 1986, imports of textiles and apparel increased by 17 percent. This increase amounted to almost 2 billion square yards of growth in one year alone.

Put another way, had that increase not occurred, it would have created almost 200,000 new job opportunities for U.S. textile and apparel workers.

Import penetration in our apparel and apparel fabric markets is now over 50 percent, and this compares to 28 percent import penetration when the tariff cuts that were agreed to in the Tokyo round of multilateral trade negotiations began to be implemented in 1980.

In 1980, the U.S. textile industry employed over 150,000 more workers than it does today, and the U.S. apparel industry employed over 200,000 more workers.

The trade deficit in 1980 for textiles and apparel was about $4 billion. Last year it was $21 billion. It now accounts for 12 percent of our total merchandise trade deficit.

I would like to cite for you, briefly, a few recent developments that have contributed to that record growth. First of all, the administration has permitted the People's Republic of China to increase their textile shipments, last year alone, by 60 percent.

Today, the PRC is poised to become our No. 1 supplier, and will probably pass Taiwan in a very short time. Similarly, large increases have been granted so that many smaller suppliers have guaranteed access in ever-greater quantities into our market.

We understand that foreign policy concerns often motivate these kinds of actions, but there must be a better way to conduct foreign policy than to give away the jobs of U.S. textile and apparel workers in the process.

The administration has also said that new textile agreements signed recently with Hong Kong, Korea, Taiwan, and Japan, would solve our import problem. Frankly, we do not know how that could happen.

These four agreements are somewhat tighter than the earlier agreements, but these agreements will grant those countries increases into our market, guaranteed increases, of over 500 million square yards over the lives of those agreements.

All of this took place after the administration said that they were going to freeze imports from these countries. When you couple these agreements with others that have been negotiated, the result is an overall import growth rate that will ensure the steady but inevitable liquidation of large parts of the U.S. apparel and textile industries in the United States.

The consequences of this growth are damaging not only our industry but the economy in general. Displaced textile workers, if they can find jobs at all, very often must take jobs that are lower paying, jobs that are often in the service sector at considerably below the wages they were making in the textile and apparel sector.

We believe that a legislative solution is absolutely essential to slow the import growth of textiles and apparel into this market, so that the domestic industry and its workers can share in the slow but real growth in this market, instead of having to turn over that growth, and an ever-growing share of our market to imported textiles and apparel.

Foreign textile and apparel workers earn but a fraction of our wages. They work under conditions that are largely illegal in the United States.

We do not believe that the United States should compete with those producers by having to lower the wages of our workers, and certainly not create working conditions comparable to those overseas.

Mr. Chairman, that is why we wholeheartedly support legislation introduced last week, as H.R. 1154, the Textile Apparel Trade Act of 1987, and that is why we urge the subcommittee to exclude from tariff cuts in the new round of multilateral trade negotiations, textiles, apparel, and other products presently excluded from GSP. Thank you.

[The prepared statement follows:]

Statement of
Carlos Moore
Executive Vice President
American Textile Manufacturers Institute

To Limit the President's Authority to Reduce Textile and Apparel Tariffs in Multilateral Trade Negotiations

Mr. Chairman, my name is Carlos Moore. I am chairman of the American Fiber/Textile/Apparel Coalition (AFTAC) which is comprised of some 21 organizations representing industries and labor unions involved in production of textile fibers, fabrics, apparel, and other textile products throughout the United States. I appreciate the opportunity to appear here on their behalf.

Mr. Chairman, I am appearing today with a panel of other concerned industry representatives to express opposition to the tariff-cutting provision in H.R. 3, "The Trade and International Economic Policy Reform Act of 1987". We appeared before your subcommittee during the last Congress, also to register our opposition to the similar provision in H.R. 4800 to grant the President tariff-cutting authority as part of the current multilateral round of trade negotiations. Since that hearing, the import situation has only worsened for the U.S. textile and apparel industry. We believe that a grant of Presidential authority to reduce tariffs on these products can only result in further injury to the U.S. fiber, textile and apparel industry.

During 1986, imports of textiles and apparel increased by 17.2 percent. This increase amounted to almost 2 billion square yard equivalents of fabric into this country. More importantly, it represented nearly 200,000 lost job opportunities for American workers. Put another way, had the increase not occurred or had imports grown at a rate equal to our long-term market growth rate, almost 200,000 more jobs would have been created in the U.S. fiber, textile, apparel complex.

Because of import increases since 1980, import penetration in the apparel and apparel fabric markets now exceeds 50 percent. When the tariff cuts agreed to in the Tokyo round of multilateral trade negotiations began to be implemented in 1980, import penetration in this sector was only 28 percent. In 1980 the U.S. textile industry employed 150,000 more workers than it does today and the apparel industry employed 200,000 more. During the six years since 1980 the textile/apparel trade deficit increased from $4 million to $21 million last year. That trade deficit now accounts for 12 per cent of the U.S. total merchandise trade deficit.

Also during this period textile and apparel tariffs were being steadily reduced as part of the concessions granted by the U.S. in the Tokyo Round.

I would like to cite for you a few recent developments that have contributed to the record growth of textile and apparel imports in 1986. The Administration has permitted the Peoples' Republic of China to increase their shipments last year alone into this market by 60 percent. Today, the PRC has become the number one supplier of textiles and apparel to the U.S., having moved past Taiwan last year. Similarly, large increases have been permitted with other smaller suppliers and very generous bilateral agreements have been recently negotiated resulting in increased guaranteed access for those countries in the years to come. While the foreign policy concerns motivating these concessions may be well-founded and in some cases admirable, there must be a better way to conduct foreign policy than to give away the jobs of U.S. workers as part of that process.

The Administration has said that the new textile agreements signed in 1986 with Hong Kong, Korea, Taiwan and Japan would solve the import problem. We do not see how that can happen. Those four agreements are admittedly tighter than their predecessor agreements. However, those four countries which supply over half of the textiles and apparel imported into the country will be permitted to increase their shipments by more than 500 million square yards over the lives of the agreements. And this resulted after the Administration announced its intention to freeze imports from those countries.

When these agreements are coupled with others such as those I just mentioned, the result is an overall import growth rate which ensures the inevitable liquidation of the U.S. apparel industry and that part of the U.S. textile industry which makes apparel fabrics and yarns. The impact wil be a devastating loss of jobs and investments and a vital piece of the U.S. manufacturing base.

The consequences of this import growth are damaging to our industry and its workers and to the economy in general. Not only do displaced textile workers usually find work at lower-paying jobs if they can find jobs at all, but this story is not confined to the fiber, textile and apparel industry. It is being repeated in one sector of U.S. manufacturing after another. We must have a sound manufacturing base if we are to turn around our trade deficit, if we are to prosper and improve our standard of living. The answer for our industry is not to reduce textile and apparel tariffs. The answer is to find a legislative solution to slow import growth of textiles and apparel into this market so that the domestic industry and its workers can share in our market growth instead of having to turn over that entire growth and more every year to imports. Foreign textile and apparel workers earn a fraction of U.S. wages and work under conditions which are largely illegal in the United States. We do not believe the U.S. should compete with those producers by lowering the wages of our workers or creating working conditions comparable to those overseas. Mr. Chairman, that is why we wholeheartedly support legislation introduced last week as H.R. 1154, the Textile and Apparel Trade Act of 1987, and that is why we urge the sub-committee to exclude from tariff-cuts in the new round of multilateral trade negotiations textiles and apparel and other products presently excluded from GSP.

Chairman GIBBONS. Thank you. The next witness on the list is Richard Patterson of Dow Chemical USA.

STATEMENT OF RICHARD PATTERSON, GOVERNMENT RELATIONS MANAGER, DOW CHEMICAL USA, ON BEHALF OF THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION

Mr. PATTERSON. Mr. Chairman, I am Richard Patterson, Government relations manager of Dow Chemical USA, and international trade committee chairman for the Synthetic Organic Chemical Manufacturers Association. You can see why we shorten that down to SOCMA.

SOCMA is a nonprofit trade association representing over a hundred organic chemical companies, the majority of which have annual organic chemical sales under $50 million. The members of SOCMA produce more than 5,000 synthetic organic chemicals which are primarily intermediates, and finished chemicals for industrial use. I will briefly summarize our position on both the MTN negotiating authority and a duty suspension provision.

Regarding the MTN negotiating authority, SOCMA supports granting the administration an extension of its existing authority to negotiate multilateral trade agreements subject to Congressional approval under expedited review procedures which we all call fast track. However, unlike prior rounds, the emphasis in this MTN should not be on tariff cutting, but rather, on efforts to reduce or eliminate significant nontariff barriers to trade. SOCMA believes the GATT round should address a number of nontariff issues which are crucial to the long-range competitive position of the U.S. chemical industry. These include restrictions on access to foreign markets by means of import-licensing schemes, restrictions on foreign investment, and ineffective protection of intellectual property rights.

Unless progress is made on those issues, as well as on reform of the GATT dispute resolution procedures, we will give up much more than we can gain in tariff negotiations.

We are accordingly opposed to the provision in H.R. 3 which would grant the administration authority to proclaim 60 percent tariff reductions in chemical tariffs without any congressional review. We believe that the President should be granted tariff-negotiating authority, not proclamation authority, and that there should be a cap on the size of the reductions which can be negotiated.

To address import-sensitive products, SOCMA suggests that the provision in H.R. 3 which requires that tariff cuts on import-sensitive articles be brought back for review, is a good foundation for a more broad-based provision. SOCMA supports limiting tariff reductions for import-sensitive products that are eligible for GSP as just suggested by the witness from the Group of 33. In addition, SOCMA supports including in H.R. 3 a procedure for industries with products on the GSP list to petition to have their products excluded from tariff negotiations on the grounds of import sensitivity. If all of that sounds like we are opposed to tariff-cutting authority, that is the message that we think Congress should give.

We would be happy to provide more details about our suggestions in that area, if the committee is interested.

On the duty suspension provision that I mentioned, over the last several years, the great majority of miscellaneous duty suspension bills have been for chemical products. However, many SOCMA companies have been deterred from manufacturing certain chemicals because of the lengthy time-consuming and burdensome process of getting Congress to pass legislation suspending the duties on imported raw materials not manufactured in the United States. There is a clear need to set up an orderly procedure for obtaining non-controversial-duty suspensions that operates with greater certainty and predictability, especially in light of the failure of the last Congress to pass any duty suspension bills.

SOCMA suggests that an administrative procedure be established to handle duty-suspension requests. This administrative procedure would parallel the current congressional legislative procedure, not replace it.

Again in the name of brevity, I would be happy to provide more details if they would be of interest to you.

Thank you very much for the opportunity.

[The prepared statement follows:]

Statement of Richard Patterson, on Behalf of the Synthetic Organic Chemical Manufacturers Association

I. INTRODUCTION

I am Richard Patterson, Government Relations Manager of Dow Chemical, U.S.A., and International Trade Committee Chairman of the Synthetic Organic Chemical Manufacturers Association (SOCMA). I would like to submit my written statement which I will now summarize for the record.

SOCMA is a nonprofit trade association representing over 100 organic chemical companies, the majority of which have annual organic chemical sales under $50,000,000. The members of SOCMA produce more than 5,000 synthetic organic chemicals which are primarily intermediates and finished chemicals for industrial use. I will briefly summarize our position on MTN negotiating authority and trade law reform and then address the specific issue of tariff negotiations in more detail.

A. MTN Negotiating Authority

SOCMA supports granting the Administration an extension of its existing authority to negotiate multilateral trade agreements subject to Congressional approval under expedited review procedures. However, unlike prior rounds, the emphasis in this MTN, should not be on tariff cutting but rather on efforts to eliminate or reduce significant non-tariff barriers to trade. SOCMA believes the new GATT round should address a number of non-tariff issues which are crucial to the long range competitive position of the U.S. chemical industry. These include restrictions on access to foreign markets by means of import licensing schemes, restrictions on foreign investment and ineffective protection of intellectual property rights. Unless progress is made on those issues, as well as on reform of the GATT dispute resolution procedures, we will give up much more than we can gain in tariff negotiations.

We are accordingly opposed to the provisions in H.R. 3 which grant the Administration authority to proclaim 60% reductions in chemical tariffs without any Congressional review. We believe that the President should be granted tariff negotiating authority not proclamation authority and that there should be a cap on the size of the reductions which can be negotiated.

To address import sensitive products, SOCMA suggests that the provision in H.R. 3 which requires that tariff cuts on import sensitive articles as defined by GSP eligibility be brought back for review, is a good foundation for a more broad based provision. SOCMA supports limiting tariff reductions for import sensitive products that are eligible for GSP treatment as just suggested by the witness for the Group of 33. In addition, SOCMA supports including in H.R. 3 a procedure for industries with products on the GSP list to petition to have their products excluded from the tariff negotiations on the grounds of import sensitivity. If all of that sounds like we are opposed to tariff cutting authority, that is the message we think Congress should give.

B. Duty Suspension Bills

Over the last several years, the great majority of miscellaneous duty suspension bills have been for chemical products. However, many SOCMA companies have been deterred from manufacturing certain chemicals because of the lengthy, time-consuming burdensome process of getting Congress to pass legislation suspending the duties on imported raw materials not manufactured in the United States. There is a clear need to set up a procedure for obtaining non-controversial duty suspensions that operates with greater certainty and predictability, especially in light of the failure of the last Congress to pass any duty suspension bills.

SOCMA suggests that an administrative procedure be established to handle duty suspension requests which would parallel the current congressional procedure. A manufacturer would have the option of requesting a suspension of a duty under this procedure only for products that were non-controversial and non-competitive. Under our proposal, the requests for duty suspensions or reinstatement would be reviewed on an annual basis by the International Trade Commission, and would be concluded within a prescribed time frame. This procedure would prevent the requests from being overlooked as they sometimes are in the ongoing crush of legislative business.

For your information, enactment of this proposal would save the chemical industry alone over $3 million per year in duties on chemicals not produced in the United States. It would enhance the competitiveness of the U.S. chemical industry and set us on equal footing with our competitors.

III. Summary of Recommendations on MTN Tariff Negotiating Authority

SOCMA strongly believes that this new round of Multilateral Trade Negotiations should focus on removing foreign non-tariff barriers and developing workable trade dispute resolution procedures and not simply be another tariff cutting exercise. In particular, granting the President broad authority to proclaim tariff reductions as provided in H.R. 3, could accelerate the declining U.S. balance of trade in chemicals and seriously injure benzenoid chemical producers. SOCMA therefore urges that legislation granting the President tariff negotiating authority should include the following principles:

1. The President should be granted tariff negotiating authority, with agreements being subject to "fast track" Congressional review, similar to the non-tariff negotiating authority the President is granted by 102 of the Trade Agreements Act. Tariff agreements should not be approved unless foreign non-tariff restrictions which impair the value of tariff reductions have been addressed and substantially reduced.
2. The President should be authorized to negotiate reductions of no more than 25% of the final Tokyo Round tariff levels and the reductions in U.S. tariffs should be phased in at a rate of no more than 1% *ad valorem* per year. For example, a 10% tariff should not be reduced more than 5% and that reduction should be phased in over five years.
3. The bill should require that tariff negotiations achieve sectoral balance so that tariff reductions on chemicals are matched by foreign tariff concessions on chemicals of equal competitive value.
4. The bill should exclude from tariff cuts products exempt from GSP on the grounds of import sensitivity (i.e. most benzenoid chemicals). The bill should also establish a procedure to enable affected industries to identify and obtain exceptions from tariff cuts for other import sensitive products.
5. The bill should instruct our negotiators to negotiate on tariffs on basis of request lists, rather than by imposing formula cuts across the board, or automatically eliminating tariffs below certain levels.

Chairman GIBBONS. Thank you, sir. Let me say, I promised that at 12:30 we would quit, and come back at 1:30, and I think I had better keep my promise. I will see you all, then, at 1:30.

[Whereupon, at 12:31 p.m., the subcommittee recessed, to reconvene at 1:30 p.m.]

Chairman GIBBONS. Because of plane schedules, we are going to swap some of the panels around on the second page. Mainly, we are going to put Mr. Richardson up where the Government witnesses are. Both of them—Mr. Horlick and Mr. Richardson—up where the Government witnesses are. Then we will take the Government witnesses and then we will come to the steel industry and metalworkers.

I think we had all finished speaking when the magical hour of 12:30 arrived. If there is any of you that have thought of something that you want to say in the meantime, though, go right ahead before we start.

Mr. Walker, we welcome you back here. We recognize your tenure in USTR. You said in your statement that you did not think we ought to follow the same type of fast-track procedure we followed in the past.

Would you mind elaborating for us.

Mr. WALKER. No. My testimony, sir, was that we do favor the kind of fast track that has been proposed in the past, and we would not want to see that procedure burdened by additional procedural or substantive conditions.

Chairman GIBBONS. Well, I guess I would say that it should not require submission of all agreements in a single package.

Mr. WALKER. We would like to have two things, Mr. Chairman. First of all—and I speak with some experience on this—in order to close anything, it is really very important for the negotiators to be able to say to their trading partners, "All right, once we sign a deal, it is going to go to the Congress for an up or down vote." So we want that authority out there and enacted.

But then secondly, it is important that the negotiators have a degree of flexibility in deciding when to come back to the Congress. If, for example, something like a counterfeiting code or something else could be negotiated quickly, then it seems to me advantageous to all of us to bring it back, as early as the negotiators think it is appropriate, for separate treatment and not wait for one great package.

Chairman GIBBONS. Well, that does make some sense. I have not followed it all the way through because sometimes it is a good idea to get things off the table once you have finally agreed to them.

What do you think about deadlines in negotiation?

Mr. WALKER. Mr. Chairman, I think that this particular negotiation, the Uruguay round, is going to be dealing with areas that are essentially new. We are plowing new ground in investment, in intellectual property, and in services, in particular.

We are, hopefully, going to plow some new ground in agriculture and in some other areas that have not been fully treated in previous negotiations.

My own feeling is that arbitrary deadlines for the expiration of statutory authority are not going to be useful in this negotiation.

Indeed, it seems to me that a strong argument can be made for the proposition that because we are dealing with a variety of new subjects, it is important for the negotiations themselves to give the negotiators flexibility as to when they bring something back, when they declare closure.

We can ourselves—the USTR as negotiators can—establish a deadline if they want to, for the purpose of providing some internally generated pressure. But I think the kind of pressure that is generated by a statutory expiration of authority is likely to be counterproductive because our trading partners can, in effect, say, "Well, we are just going to hold your feet to the fire until the expiration of that statutory authority, and you are going to have to take what we give you at that point in time."

So on balance, I would favor a longer extension of authority rather than a shorter extension authority.

Chairman GIBBONS. Well, should we provide or encourage that industrial products be treated in industrial sectors, agricultural products be treated in agricultural sectors, service products——

There is a possibility—I would think a strong possibility, maybe even a desirability—that all these things will get traded off together. I am kind of searching around to pull out your experiences as negotiator.

Mr. WALKER. Well, in the Tokyo round and, indeed, in previous rounds—the European Community, for example, has always sought to isolate agricultural negotiations in the agriculture committee and to ensure that there is no relationship between agricultural negotiations and other parts of the negotiations.

Historically, the United States has always resisted that approach because we have agricultural concessions which we want to secure from the European Community. I think that is the position that the administration is taking now and I think it is the right position to take.

We have said and we said going into the Punta del Este meetings that, as far as the United States was concerned, everything was on the table. That being the case, I think we should conduct the negotiations in that spirit, putting everything up for negotiation and ensuring that at the end of the day there is going to have to be a balanced package or series of packages that are brought back.

But I do not think it is to our interest to isolate sectors of the negotiations; nor do I think it is to our interest to require that there be sectoral balance.

Inevitably, if there are going to be successful negotiations, there are going to have to be concessions given as well as concessions gained. There has to be a national overall balance struck.

But to write standards in the legislation that would tie the negotiators' hands and force them to have a balanced package within each sector of the negotiations, I think, would be a mistake because I think it would lower substantially the amount of progress that could be made and give us a less-valuable product.

Chairman GIBBONS. What do you think of Mr. Nehmer's suggestion that we not put some of his items on the negotiating table?

Mr. WALKER. Historically, tariff negotiations have always had exclusions; but not by statute—by negotiation. There are products that we have negotiated with our other trading partners to take off the tariff-cutting list.

I think it is a mistake to do that by legislation going into a negotiation because I think you reduce your leverage. If there are products that a legitimate case could be made as to why they should not be subject to tariff cutting, fine; but make that a subject of the negotiations, not a subject of legislation.

Chairman GIBBONS. That would be all right with you, would it not, Mr. Nehmer.

Mr. NEHMER. Well, that is exactly what we are concerned about. We do not have as much confidence, I guess, as Ambassador Walker does, as to what the administration would do if it had the unlimited authority, even with the statement that they made time and time again, that tariffs are not the centerpiece of this new negotiation.

The fact that the administration itself was critical of this committee in the House when H.R. 4800 was going through on this question of tariff-cutting authority; but the very modest Jones amendment with a very modest burden that that might impose.

Coming in now with the trade bill which provides for 10 years of unlimited tariff-cutting authority, me thinks they protest too much. Frankly, those of our who happen to work for industries—and, you know, the three of us here are all veterans of these negotiations—I in the Kennedy round and my two colleagues on either side of me in the Tokyo round.

So we do have a little insight as to what happens. And we are really not prepared to put the fate of our industries in the hands of the people who we think will do what has been done before by their predecessors.

Chairman GIBBONS. Let me ask you: Is there a need to improve the private sector liaison and participation in these negotiations or is it counterproductive?

Mr. PATTERSON. Do you want a unamimous answer? We each have a point of view, I think.

Mr. MOORE. All of us have a view. It may not be shared, but we have one.

Chairman GIBBONS. Well, let's share it.

Mr. MOORE. Well, at the present moment, I am privileged to serve as chairman of the advisory committee on textiles and apparel, which is being used as part of the advisory process—the private sector advisory process in the Uruguay round.

I have to say that the administration is making a very strong effort to include the advisory process—the private sector process—in this round perhaps even more than in the Tokyo round, during which I had the privilege to work for and with Ambassador Walker in Geneva.

I think, however, we—all of us in that advisory system—are constantly on guard because we come away from most of those meetings with the feeling that we really are receiving a briefing and are not necessarily giving advice that much attention is being paid to.

I think that that is our primary concern. I think we need to be exposed early on to positions and maybe even tactics if they really want our advice to mean anything. They have said they are planning to do this.

I think that the jury is still out to what extent they are doing so, but I am willing to give them a chance, personally, to see how that evolves.

Chairman GIBBONS. Fawn?

Ms. EVENSON. I would echo that. I, too, am chairman of an ISAC—industry sector advisory committee: footwear, leather, and leather products.

In many instances, we get briefings by administration officials; but rarely do we feel that they are really listening to our positions on the issues that they are discussing with us.

It is a courtesy to come by and inform us of what they are doing; but when we state most forcefully our position on those issues, we do not feel it goes beyond that person and that they are not really taking us seriously.

There should be greater participation on both sides, I think. They should be listening as well as talking. But at least the mechanism is established and should be utilized more fully, maybe with some more open-mindedness, I believe, on the side of the administration sometimes.

Mr. NEHMER. If I may add, Mr. Chairman, I, too, am a member of an ISAC. I think the present operations seeking advice from the private sector are better than they have ever been.

Nevertheless, it does fall short not only for the reasons that you have just heard but also another problem: It is extremely difficult to replace a person on one of these ISACs. It takes a lot of time before we ever can get somebody——

We have certain sectors that are not represented because of the tremendous amount of time in security clearance and whatever other clearance is required.

At some times, I come away from a meeting—we have about three meetings a year, four meetings a year—and sometimes I come away saying, "This is a big charade." It is not quite that, but it is certainly along the lines of that.

I think we do our best to educate the Government people; they do their best to acquaint us with what is up, and it is better than it has ever been.

Mr. WALKER. Just one short observation, Mr. Chairman.

These committees were set up under the Trade Act of 1974 because of the conviction that the wiley foreigners had outbargained us in the Kennedy round and the foreign industries had the ear of their negotiators at just the right time, and we were going to make sure that that did not happen again.

The fact of the matter is that there is no other government involved in these negotiations that has anything like the degree of interchange that our industry has with our Government. Other governments are negotiating, really, from Government agendas much more than private sector agendas.

So while I understand and sympathize with the concerns of my colleagues, that they, perhaps, do not have as much of the ears of the negotiators as they want to have; they have a lot more than their foreign counterparts have. And speaking from experience, the negotiators do pay attention to the advisers and they do learn things from the advisers.

At the same time, the negotiators do have to conduct the negotiations.

Mr. PATTERSON. Mr. Chairman, the chemical industry has grown categorically across the board with SOCMA—Chemical Manufacturers Association—OCITA and ISAC 3, strongly urging that there would be consultations—not just briefings. And I agree with the problem of being briefed rather than being asked to participate, have strongly requested that there be consultations as the negotiations are progressing.

Chairman GIBBONS. Is there anything in the legislation we could do to improve that process?

Mr. PATTERSON. Other than a sense of Congress, I do not believe you can mandate the people—you know, listen to you or must, in true faith, do it. But the idea coming from Congress that this was a serious desire on the part of Congress, I think, would be very helpful, especially where things go down the line a couple of years from now, whether we will be a new U.S. Trade Adviser or Trade Representative.

It would be good to lay down that foundation for the—I should not say next generation, but the——

Chairman GIBBONS. If you cannot figure out any better way to do it in legislation, we will do it in the report language at least, and I would appreciate your——

Mr. NEHMER. And I hope you would urge the administration witnesses who will be following us to do something about speeding up the clearances of ISAC-member replacements. That is becoming a bit of an embarrassment.

Mr. PATTERSON. ISAC 3 echos that.

Mr. MOORE. We do, too.

Chairman GIBBONS. Mr. Jenkins.

Mr. JENKINS. Thank you, Mr. Chairman. I guess I will address these questions to the footwear panel and the textile panel.

Is there anything in the general trade bill that will be of any great benefit to your industries?

Mr. MOORE. Mr. Jenkins, I will be happy to start it off.

We have looked at the bill very carefully. And what we have found is what we testified about today, and that is we are very, very concerned about the grant of tariff-cutting authority.

We do not see anything in there that is going to solve our import problem. In fact, there are concerns that we have about unfair trade practices that are not really addressed in that legislation. So I think we come out looking at that legislation as one negative and no pluses in terms of evaluating it—the negative being the grant of tariff-cutting authority and no positive benefits to us in the bill.

Mr. JENKINS. In the shoe industry, I know the import penetration is just up to 81 percent.

Is there anything in the bill that will be of any particular help to you?

Ms. EVENSON. I do not think it is going to be broad enough to solve the import problem of the domestic footwear industry.

We have, over the past 12 years, tried to utilize just about every statute in that bill to our benefit. We have brought six countervailing duty cases; we have never lost one. We have brought dumping cases; we have brought five escape clause cases. We brought a 301 case, attacking the trade practices of nine foreign countries. None of those has really solved the import problem. We have seen import penetration rise from the low thirties now up to 81 percent, as you exactly mentioned.

For our industry and I think for textiles and apparel, the Government has to take a position at some point that we have given away enough of this industry and no more should be allowed to go. We are strategic industries, and we provide entry level positions for people with low skills. Some of these industries should continue in the United States, and passing that trade bill is not going to make that happen.

Mr. **Nehmer**. I would say that I would agree, certainly with my two colleagues on the shortcomings that exist. I think H.R. 3, nevertheless, on an overall basis, is certainly an improvement over what we have today, and it is probably a better piece of legislation from the point of view of import-impacted industries than the Bentsen bill in the Senate and certainly than the administration's so-called trade bill.

It is a better piece of legislation. But even take the escape clause, Mr. Jenkins, the provisions there. The absence of the provision to eliminate the word "substantial," which was talked about this morning, I think, is a shortcoming of H.R. 3.

I would agree with the position which the LICIT people took on section 201. Just recognize that there have been 60 cases completed under section 201 since the Trade Act of 1974 passed. And of 60 cases, only 13 petitions have resulted in import relief. One of them, the 13th—Carbon Steel—is really technically not under the provisions of the escape clause. That is a poor batting average by any standard.

That is not to say that the President of the United States in office had 60 cases to consider—far from it. Roughly half of the 60 were affirmative or split votes that went to the White House for approval. So if you assume roughly 30 resulting in import relief for 13, that is a very poor record.

I think that if we are really serious this year in this opportunity that exists in the 100th Congress, we really should improve the escape-clause procedure for the reasons that Howard Samuel said this morning: It is the safety valve; it is what allows a liberal trade philosophy to go forward because you can have exceptions to it from time to time. If you do not have exceptions, then you have the kind of criticism of the whole trade legislative process that we have been experiencing now for a few years.

Mr. **Jenkins**. Do you agree with that, Mr. Walker?

Mr. **Walker**. I agree with Mr. Nehmer's last statement that an effective escape clause is an important element in maintaining an open trade environment. Absolutely. One needs that kind of a safety valve.

I am not sure that the specific language proposed by LICIT is necessarily the right answer, nor am I sure that the fact that 13 cases have succeeded out of 60 is necessarily a condemnation of the existing system.

More broadly, the U.S. Council has concerns about this bill of a different character than have been articulated by my colleagues on the panel. The U.S. Council opposed H.R. 4800 because it, in our view, was protectionist legislation. H.R. 3, obviously, reflects H.R. 4800 very substantially.

It had too much unilateral action by the United States. It called for actions that would be in conflict with our international obligations, and it called for actions that would close our markets and lead to retaliation.

On those scores, we believe H.R. 3 also falls short and, therefore, we do not support those elements of the legislation. We do support various elements that we have indicated in our statement, particularly dealing with the negotiating authority and nonmarket economies and various other things.

Mr. JENKINS. Now who are the members of the U.S. Council? Are they primarily importers?

Mr. WALKER. No. They are industrial companies, principally, Mr. Jenkins. I will supply a list for the record.

[The following was subsequently received:]

UNITED STATES COUNCIL MEMBERS

As of 12/86

I. Corporate Members

ACS Associates, Inc.
Air Products & Chemicals, Inc.
Alexander & Alexander, Inc.
Allied-Signal, Inc.
Aluminum Company of America
AMAX, Inc.
American Cyanamid Company
American Express Company
American Home Products Corporation
American International Group, Inc.
American Reinsurance Company
American Standard, Inc.
Amoco Corporation
Anheuser-Busch Companies
ARAMCO
ARCO International Oil & Gas Company
Armco, Inc.
Arthur Andersen & Company
Asiatic Co. (U.S.A.), Inc.
A T & T Corporation
Avon Products, Inc.
N.W. Ayer, Inc.

Bank of America, N.T. & S.A.
Bank of New York
Bankers Trust Company
Baxter Travenol Laboratories
Beatrice Cos.
Bechtel Group, Inc.
Becton Dickinson & Company
Booz Allen & Hamilton International
Borg-Warner Corporation
BP North America
BR Communications
Bristol-Myers Company
Brown Brothers Harriman & Company

* New since last listing

Cable & Wireless North America, Inc.
Cabot Corporation
Cadwell Laboratories
Caltex Petroleum Corporation
Capital Cities/ABC
Cargill, Inc.
Castle & Cooke, Inc.
Caterpillar, Inc.
CBS Inc.
Chase Manahattan Bank,N.A.
Chemical Bank
Chevron Corporation
CIBA-GEIGY Corporation
CIGNA Corporation
Cimlinc, Inc.
Citibank, N.A.
Coca-Cola Company
Colgate-Palmolive Company
Continental Corporation
Continental Illinois Bank and Trust Company
Control Data Corporation
Convex Computer Corporation
Coopers & Lybrand
Corning Glass Works
CPC International, Inc.

Daisy Systems Corporation
Danaos, Ltd.
Deere & Company
Deloitte, Haskins & Sells
The Dow Chemical Company
E. I. du Pont de Nemours & Company, Inc.
The Dun & Bradstreet Corporation

Eastman Kodak Company
Eaton Corporation
Emhart Corporation
Enron Corporation (formerly InterNorth)
Environmental Resource Management, Inc.
The Equitable Life Assurance Society of the U.S.
Ernst & Whinney
Estee Lauder, Inc.
Exxon Corporation

Fairchild Weston Systems, Inc.
First Boston Corporation
First Interstate Bank Limited
*The First National Bank of Chicago
Paul Fisher, Inc.
Ford Motor Corporation

General Electric Company
General Foods Corporation
General Motors Corporation
Goldman Sachs & Company
Goodyear Tire & Rubber Company
W. R. Grace & Company
GRE Albany Atlas Group
Grumman Corporation
GTE International, Inc.

Halliburton Company
M.A. Hanna Company
Harrison International Corporation
H. J. Heinz Company
Hewlett-Packard Company
Oscar Heyman & Brothers, Inc.
Hoffmann-LaRoche, Inc.
Honeywell, Inc.
Hughes Aircraft Company
Hughes Helicopters
Hycrude Corporation

IBM Corporation
Inframetrics
Interlake, Inc.
International Multifoods
Interpublic Group of Companies, Inc
Irving Trust Company
ITT Corporation

Johnson & Higgins
Johnson & Johnson
S. C. Johnson & Son, Inc.

Kellogg Company
Kemper Reinsurance Company
Kevex Corporation
Kidder Peabody & Company, Inc.
Kollsman Instruments Company

Eli Lilly & Company
Loctite Corporation
Lykes Bros. Steamship Co.

Manufacturers Hanover Trust Company
Marine Midland Bank
Mars, Inc.
Marsh & McLennan, Inc.
Mastercard International, Inc.
McDonnell Douglas Corporation
McGraw-Hill, Inc.
MCI International
McKinsey & Company, Inc.
Merck & Company
Merrill Lynch International, Inc.
Metropolitan Life Insurance Company
MJC Associates
3M Company
Mobil Corporation
Monsanto Company
Morgan Guaranty Trust Company
Morgan Stanley & Company
Motorola, Inc.

NEC America, Inc.
Nestle Enterprises, Inc.
Nicolet Instrument Corporation
North American Philips Company, Inc.

Olin Corporation
Owens-Corning Fiberglas Corporation
Owens-Illinois, Inc.

Pacific Telesis Group
Peat Marwick Mitchell & Company
Pfizer, Inc.
Philadelphia National Bank
Philip Morris Incorporated
Phillips Petroleum Company
Port Authority of New York and New Jersey
PPG Industries, Inc.
Price Waterhouse
The Procter & Gamble Company
Alexander Proudfoot Company

RCA Corporation
Reader's Digest Association, Inc.
RJR/Nabisco
Roanoke Companies
Rockwell International Corporation
Rohm & Haas Company

Sandoz, Inc.
Scallop Corporation
Scarbroughs Department Store
Schering-Plough Corporation
Scientific-Atlanta, Inc.
Sea-Land Corporation
Shearson Lehman Bros,
Shell Oil Company
SIFCO Industries, Inc.
Singer Company
SmithKline Beckman Corporation
Sperry Corporation
St. Joe Minerals
The Standard Oil Company
Sterling Drug Inc.
Sundstrand Corporation
Swiss Bank Corporation
*Syntex Corporation

Tektronix, Inc.
Telecommunications Technology, Inc.
Teledyne, Inc.
Tenneco, Inc.
Texaco, Inc.
Texas Instruments, Inc.
Time, Inc.
Town & Country Jewelry Manufacturing Company
Tracor Aerospace, Inc.
TRW, Inc.
Turner Broadcasting System, Inc.

Unilever United States, Inc.
Union Carbide Corporation
United Brands Company
United States Lines, Inc.
United States Trust Company of New York
United Technologies, Inc.
UNOCAL Corporation
The Upjohn Company
USX Corporation

VISA U.S.A., Inc.

Hiram Walker & Sons, Inc.
Warner-Lambert Company
Watkins-Johnson Company
Wavetek, Inc.
Westinghouse Electric Corporation
Whitney National Bank

Xerox Corporation

Young & Rubicam

II. Organization Members

American Association of Advertising Agencies
American Chamber of Commerce: France
American Chamber of Commerce: Germany
American Chamber of Commerce: Hong Kong
American Chamber of Commerce: Italy
American Institute of Marine Underwriters
American Paper Institute
Association of National Advertisers
Chamber of Commerce of the United States
Chemical Manufacturers Association
Computer and Business Equipment Manufacturers Association
Council of Better Business Bureaus, Inc.
Federation of American Controlled Shipping
Greater Philadelphia Chamber of Commerce
Grocery Manufacturers of America

International Anti-Counterfeiting Coalition
International Televent, Inc.
Motion Picture Export Association
National Agricultural Chemicals Association
National Association of Councils on International Banking
National Association of Manufacturers
Pharmaceutical Manufacturers Association
The Proprietary Association
Risk Insurance Management Society
World Trade Center

III. Law Firm Members

Law Offices of S. G. Archibald
Arnold & Porter
Beveridge & Diamond
Bond, Schoeneck & King
Brobeck, Phleger & Harrison
Burlingham, Underwood & Lord
Cleary, Gottlieb, Steen & Hamilton
Coudert Brothers
Covington & Burling
Day & Wong
Debevoise & Plimpton
Donovan, Leisure, Newton & Irvine
Fowler, White, Gillen, Boggs, Villareal & Banker, P.A.
Fried, Frank, Harris, Shriver & Kampelman
Gibson, Dunn & Crutcher
Hale & Dorr
Hughes, Hubbard & Reed
Jones, Day, Reavis & Pogue
Keller & Heckman
Kilpatrick & Cody
LeBoeuf, Lamb, Leiby & MacRae
Mayer, Brown & Platt
Milbank, Tweed, Hadley & McCloy
Miller & Chevalier
Mudge, Rose, Guthrie, Alexander & Ferdon
Paul, Hastings, Janofsky & Walker
Pillsbury, Madison & Sutro
Reid & Priest
Salans, Hertzfeld & Heilbronn
*Schwab Goldberg Price & Dannay
Shearman & Sterling
Squire, Sanders & Dempsey
Sullivan & Cromwell
Surrey & Morse
Weil, Gotshal & Manges
Weiss, Dawid, Fross, Zelnick & Lehrman
White & Case
Wiley & Rein
Willkie, Farr & Gallagher
Wilmer, Cutler & Pickering

IV. Individual Members

Philip F. Ashler
Lee H. Bloom
W. D. Eberle
I.V. de Chellis
Joseph A. Greenwald
Richard C. Mead
Richard G. Mills
F. Taylor Ostrander
Philip D. Reed
Mary G. Roebling
William C. Turner
Suzanne R. Wolf

Mr. **Jenkins**. Do any of these gentlemen belong to the U.S. Council?

Mr. **Walker**. I do not believe so.

Dow Chemical.

Mr. **Jenkins**. Since I have started on my quest, I was just trying to see if the banks are financing the U.S. Council; are they? Do you get most of your contributions from the large banks?

Mr. **Walker**. Oh, I think there are some bank members. But the banks, by no means, are predominant——

Mr. **Jenkins**. I mean big banks. Big law firms, I always lump them sort of together.

Mr. **Jenkins**. I think you indicate in your testimony, Mr. Walker, if the bill passed as is, it probably would not help the trade deficit to a great deal. I think everyone generally are in accord on that. You indicate, of course, that the budget deficit is one of the primary problems with the trade deficit. I tend to agree with that.

We have talked about a surtax in caucus a few times. We could temporarily use those funds to decrease the deficit without any question. I assume we would get some temporary help for the trade deficit.

Is the down side to that worse than any relief that we might get?

Mr. **Walker**. Well, the problem with a surcharge in part is that it would provoke serious retaliation by our trading partners and would, I think, run the risk of unraveling the trading system in ways that would be very disadvantageous to us economically. Any short-term benefit that we might secure from such a measure would be more than offset by the long-term damage that would result.

Beyond that, it seems to me that we have to recognize that trading partners are not going to be sympathetic and not going to be helpful and responsive to actions which the United States takes which seem to lay on them the blame for policies which we ourselves, have taken and which we have gotten ourselves into trouble with.

They tend to view the kind of suggestions that you make—an import surcharge, for example—as an element of scapegoating and punishing them for things that we have done to ourselves.

Mr. **Jenkins**. On the budget deficit itself, I do not mean to quibble, but I see what may appear to be inconsistencies. We all have them. I know you advocate the increased lending to developing countries in your prepared statement which, I would assume, we would have to reduce spending somewhere else within the budget. I happen to be on the Budget Committee. That is the reason I am asking you how you reconciled that.

Mr. **Walker**. Well, we have endorsed the Baker plan. We believe that a combination of funds from governments—not just the U.S. Government, but from other governments as well—support of the World Bank and private-sector lending is critical to rebuilding the markets which in 1981 developing countries accounted for roughly 40 percent of U.S. manufactured exports.

In 1985 it was down to, my recollection is, 25 percent; something like that.

Mr. **Jenkins**. I agree with what you are saying there.

Do you also agree that the policy is wrong that restricts those developing countries imports?

Mr. **Walker**. Absolutely, Congressman.

Mr. **Jenkins**. You fully support their exports; is that right?

Mr. **Walker**. There is no doubt that if the developing countries are going to earn the foreign exchange in order to repay their debts and to bring greater prosperity to their people, they are going to have to earn that through exports.

Mr. **Jenkins**. If that impacts Stanley's people over there, that is just tough? Right?

Mr. **Walker**. No, it is not just tough; that is competition. That is what world trade is all about.

Ms. **Evenson**. If I could just bring up one case as an example.

When the President turned down the footwear case in August of 1985, he specifically stated in the proclamation published in the Federal Register that to take action against footwear from some countries such as Brazil would hurt U.S. banks. They would not be able to pay those loans off.

Now we get to the issue of reciprocity. Brazil can sell all the shoes here that it wants to and, in fact, it is our third largest shipper of shoes to the United States. It is the No. 1 export item out of Brazil to the United States. It represents 20 percent of our trade deficit with Brazil, and we cannot sell shoes in Brazil. They will not let them in. I do not call that reciprocity.

Mr. **Jenkins**. That does not seem fair to me, either.

Mr. **Moore**. Mr. Jenkins, the situation repeats itself time after time in the textile and apparel industry as well. In Brazil's exports to us, using Brazil as an example, since they are such a large debtor to our banks, their exports are, more often than not, subsidized in one way or another by their Government.

So we get hit both ways: We get hit on the policy, which promotes their shipments to us; and we certainly get hit on our inability to sell fabrics into Brazil, which we would love to be able to do. But there are 100, 200-percent duty as well as an import license requirement.

Mr. **Nehmer**. Ambassador Walker's position, which says he supports the idea of an escape clause as a safety valve in order to be able to maintain a liberal trade policy, and on the other hand, if the Brazilians or the others, whether it is footwear or textiles are able to out-compete their wage rates versus our wage rates—so be it—is, of course, the problem that we face.

One very, very basic reason why we say we want the import-sensitive articles taken off the table insofar as tariff cuts are concerned.

I might point out in addition to the point that Fawn Evenson made: In 1975 when the International Trade Commission unanimously recommended import relief on nonrubber footwear, the report that we received when President Ford turned down import relief for the non-rubber-footwear industry, even though he had previously made a commitment that he would deliver import relief if we got an affirmative finding of injury from the ITC. But he, nevertheless, turned it down.

The report we received was that a couple of banks in this country made representations to Secretary of the Treasury Simon who, incidentally, has denied this publicly that that had occurred; that this would adversely affect the ability of the countries that export footwear to us: Taiwan, Korea, Brazil, Mexico, and so forth, their ability to repay their debts. The banks urge that Secretary Simon use his influence with President Ford to reject import relief.

That is exactly what Secretary Simon did. He was the key person within the administration who urged President Ford to renege on his commitment. And the footwear industry did not receive relief until the following year, when President Carter, then in office, did deliver import relief in the form of two orderly marketing agreements.

Mr. JENKINS. I know my time is already up.

I think I can understand you had a commitment from President Ford.

Carlos, I guess you had a commitment from President Reagan.

Fawn, you won your 201 case and got no relief. And for some reason you feel like you ought to have a legislative solution? I think I am beginning to better understand some of your quest for legislative solutions.

Mr. MOORE. We learn by experience, Mr. Jenkins.

Ms. EVENSON. But if you do not learn soon, there might not be any industries left to save.

Mr. PATTERSON. Mr. Jenkins, may I interject a comment here regarding your question on an oil-import fee.

To some, oil is an energy source; to others, oil is a raw material. Chemical industry looks at oil as a raw material.

Mr. JENKINS. I was not referring just to an oil import fee.

Mr. PATTERSON. I am sorry; I took it as such because it is something of very great concern to us that with the positive trade balance the chemical industry has—and it was about $7.6 billion in 1986, an import fee on oil would now make our raw material noncompetitive with the rest of the world. This, as you can imagine—that threat concerns us greatly.

Mr. JENKINS. You would have to move over to this side of the panel; is that what you are saying?

Mr. PATTERSON. No. I am just saying for the chemical industry that is a potential problem.

Mr. JENKINS. Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you, each one of you. We appreciate it very much.

Now Mr. Gary Horlick and the Committee for Fair Trade with China, Mr. Furia, who is accompanied by his Washington counsel, Mr. Elliot Richardson.

Mr. Richardson, we will have you and your client go first because we understand you have a time schedule problem that is even more critical than all the rest of us.

I want to say, Mr. Richardson, you are responsible for one of the longest airplane rides I ever had in my life.

Mr. RICHARDSON. How is that, Mr. Chairman?

Chairman GIBBONS. Well, I went to a conference in Ankara, Turkey the night that all hell broke loose over there in your department and I had to fly out there and fly all the way back.

You remember those days, don't you? It was an interesting flight, though. I kept running into myself.

Mr. RICHARDSON. The night of the firestorm.

Chairman GIBBONS. What was that, the Saturday Night Massacre? Was that what it was called?

Mr. RICHARDSON. That is what it is still called, Mr. Chairman.

Our lead witness is Mr. Furia, who has a brief statement, Mr. Chairman.

STATEMENT OF EDWARD W. FURIA, ON BEHALF OF THE COMMITTEE FOR FAIR TRADE WITH CHINA, ACCOMPANIED BY ELLIOT L. RICHARDSON AND LAWRENCE P. BRODY, COUNSELS

Mr. FURIA. Mr. Chairman, I am appearing here today on behalf of the Committee on Fair Trade with China. My name is Edward W. Furia.

With me, as you know, is Elliot Richardson, special counsel; and to my right, Larry Brody, who is our general counsel.

I serve as managing director and, along with Charls E. Walker, act as cochairman of this group of American corporations concerned with the improvement of United States-China trade relations and the fair application of U.S. trade laws and policies.

The ability of American corporations to sell products and services in China is directly related to: First, the extent to which they are given fair access to China's markets; and second, China's ability, through the sale of its products at fair prices to U.S. markets, to obtain hard currency with which it can purchase such goods and services from American companies.

The business climate in China has vastly improved since 1979 as a result of China's economic reforms. In both the rural and urban economies, market forces are carefully and gradually coming into play. These changes already justify distinguishing the treatment accorded to China from that given the eastern bloc nations where market forces play little, if any, role.

Yet under our laws, China is still rigidly labeled along with the U.S.S.R., Cuba, North Korea, et cetera, as a nonmarket economy country. As a result, even when China has an actual competitive advantage and has fairly priced its exports, as soon as it achieves substantial penetration of the U.S. marketplace, it is hit with a dumping margin based on an artificial benchmark and deprived of that competitive advantage.

Simply put, the treatment China currently encounters under the U.S. trade laws is unfair and should be changed. The antidumping law should be amended, in our view, to create a new category of countries in between market and nonmarketing economy countries, which would be called planned market economies.

To be classified as a planned market economy, a nation would have to be implementing economic reforms that would eventually enable that foreign country to operate on market principles.

Other factors to be considered before a nation could qualify for planned market economy category treatment would be: First, the extent to which the nation afforded market access to U.S. goods and services;

Second, the extent to which the nation provided patent and copyright protection;

And third was moving toward fulfilling the principles of the general agreement on tariffs and trade.

If U.S. law were amended to create a planned market economy category of countries, China would have an opportunity, in an antidumping action, to show that its costs of production were equal to or less than the price charged for those goods in the United States.

If China failed to make that proof or elected not to do so, the nonmarket economy benchmark price would apply. And in this case, it would be the benchmark price that the administration is proposing in its legislation.

The effects of such an amendment would be several: First, China would be treated fairly under the U.S. antidumping and countervailing duty laws; second, U.S. companies would be afforded increased access to China's markets and fair treatment in other aspects of United States-China trade. We have found no one in the private or public sector who feels that the current antidumping and countervailing laws, as they apply to nonmarket economies, are workable, predictable or fair. The current proposed amendments to the law pose their own problems with respect to administrability, and they are not fair to China. We respectfully submit that, without a change in the law such as we propose today, which would recognize the significant economic reforms in China and provide access for Chinese goods on a fair basis to U.S. markets, it is futile for American businessmen to argue for increased fair access to China's markets or to expect that China can earn the hard currency with which to buy American goods and services.

Mr. Chairman, deviating from my prepared remarks, I was trying to think of a way to connect all of this, and it occurred to me that in international trade there is a basic rule. If it were a game, the basic rule of the game would be that the nation that produces the best products, for the best price, on a fair, basis wins.

We submit that the Chinese, having instituted market reforms, with the potential to be able to prove that they really have a competitive advantage in any product, would be deprived of the opportunity to prove it. They are literally cut out of that game. Under current law, we apply a benchmark, which Mr. Horlick describes as bizarre—I think he is right. Under the alternatives, we are still using an artificial benchmark. We don't give them a chance to play by that rule.

So if you assume that there is something, anything, that the Chinese can make cheaper and better, they don't get the chance to do that. I will give you an example of this. Let's assume that the Chinese decided to make televisions. Let's assume that a particular television made by Japan would cost $500; one made by Korea, $400. And let's assume that the Chinese could make one for $300 and that this price fairly reflected their costs in making that television.

Under current law, we might choose Korea as the surrogate nation, and we would force the Chinese to have to sell at $400 or be hit with a dumping margin, thereby not giving them the chance to compete with Korea and depriving the American consumer of the ability to buy a cheaper television.

In the case of the Heinz proposal, the import price from the largest volume producer would be used. In that case, it would be Japan. Now it is an elementary rule of marketing, advertising, and merchandising that, if you are a new entrant into the marketplace, you cannot compete on any basis but price. And most analysts believe that a new entrant has to beat the price of his next competitor by 10 to 20 percent.

In the case of China, they can't do it. They would be brought up to the level of Korea or Japan. Now I ask you, if you were interested in buying a television, and you decided that you wanted to get a good price, and there was a Chinese television priced the same as a Korean television or a Japanese television, both of which have product identification and consumer loyalty, why buy a Chinese television? The consumer isn't going to do it unless he gets a better price.

And we feel that that basic rule is violated by the current law and by proposals to amend it. And unless the law gives them that chance, they are absolutely correct in saying that our laws are unfair, and our ability to get them to treat us more fairly is greatly diminished. Thank you.

Chairman GIBBONS. Thank you, sir.

[The prepared statement follows:]

COMMITTEE FOR FAIR TRADE WITH CHINA

Testimony
of
Edward W. Furia

before the
Subcommittee on Trade
of the Committee on Ways and Means
of the
United States House of Representatives

February 26, 1987

PLANNED MARKET ECONOMY PROPOSAL TO AMEND THE U.S. TRADE LAWS

A. Introduction

My name is Edward W. Furia. I am appearing here today on behalf of the *Committee on Fair Trade with China* (CFTC). With me is Elliot L. Richardson, Special Counsel. I serve as Managing Director, and, along with Charls E. Walker, act as Co-Chairman of this group of American corporations. We are pleased to appear before you today to comment on proposed amendments to improve the laws of the United States that address unfair trade practices. Specifically, we are here to offer a proposal to amend the laws which we believe will both correct the longstanding problem of the application of the antidumping and countervailing duty laws to nonmarket economy countries, as well as lay a foundation for greater two-way trade with emerging market economy countries in general and the People's Republic of China in particular.

My firm, Furia, Samuels & Co., has been engaged in trade with China for five years and has just completed, in association with Milbank, Tweed, Hadley & McCloy, an extensive 12-month analysis of a wide range of trade issues for the government of the People's Republic of China. In this analysis, working with our general counsel, Lawrence P. Brodie, we paid particular attention, at the request of China, to the antidumping and countervailing duty (AD/CVD) laws. The experience and insight we gained in this effort caused us to decide, after we completed the work we agreed to do for China, to advance a solution to this issue and to invite other American companies with similar concerns about U.S. trade law and policy to join in creating CFTC. We believe the AD/CVD laws can be amended in such a way as to treat China fairly and encourage her to continue along the historic path of economic reform that her leaders have chosen, while at the same time properly safeguarding U.S. producer and consumer interests.

It needs to be noted that, although we have done considerable research on this topic for the Chinese, we are not here today to speak for them. At the same time, we believe that the experience we have gained from our work in this area may be helpful to the Subcommittee and Committee in their deliberations on the new trade legislation.

The ability of American corporations to sell their products and services to China is directly related to: (i) the extent to which U.S. companies are given fair access to China's markets; and (ii) China's ability, through the sale of its products at fair prices to U.S. markets, to obtain hard currency with which it can purchase such goods and services from American companies. And the ability of American firms successfully to do business within China's borders -- to form joint ventures to help develop her natural resources, or, as W.R. Grace Company just announced last week, to set up wholly-owned American companies there -- is deeply affected by the overall business climate in China.

China's domestic business climate has vastly improved since normalization of relations, largely as a result of the economic changes that China has instituted as part of its modernization program. Since 1979 China has instituted extraordinary economic reforms in the countryside which have resulted in a doubling of the incomes of its 800 million peasants, and in the last few years China has begun the process of carefully and gradually implementing equally remarkable reforms in the cities. In both the rural and urban economic reforms, market forces are gradually coming into play. These changes already justify distinguishing the treatment accorded China under U.S. trade laws from that given to the Eastern bloc, where market forces are play little, if any, role; yet, under our laws, China is still rigidly labeled -- along with the USSR, Cuba, North Korea, etc. -- a nonmarket economy country. As a result, even when China has an actual competitive advantage and has fairly priced its exports, as soon as it achieves substantial penetration of the U.S. marketplace it is hit with a dumping margin based on an artificial benchmark and deprived of that competitive advantage. *Simply put, the treatment China currently encounters under the U.S. trade laws is unfair and should be changed.*

On the basis of our study and analysis, we are convinced that the best way of solving this problem is to amend the antidumping law by creating a new category of countries in between market and nonmarket economies. This new category, that might be called "planned market economies," would make possible several positive outcomes:

(1) China could, for the first time, be treated fairly and in a non-discriminatory fashion under the U.S. AD/CVD laws;

(2) the foundation would be laid for the U.S. Trade Representative to obtain increased access for U.S. firms to China's markets as well as fair treatment with respect to joint ventures and other trade with China; and

(3) most importantly, the amendment would provide a pragmatic (i.e., non-ideological) reason for China's economic reforms to continue, thereby assuring that the business climate in China will continue to improve for the many American corporations who have made a long term commitment to do business there.

B. The Planned Market Economy Proposal to Amend the U.S. Trade Laws

Amending the U.S. antidumping and countervailing duty laws to distinguish China from the general classification of nonmarket economy countries would reinforce the economic reforms that China has already made and provide an incentive for China to continue its evolution toward classification as a full market economy. The three categories of countries recognized under the U.S. antidumping and countervailing duty laws would be:

1. Market economies,
2. Planned market economies, and
3. Nonmarket economies.

Under the proposed amendment the term "planned market economy" would mean "... any foreign country whose government has been determined by the administering authority to have announced and to be implementing economic reforms of a kind that, when fully implemented, will have brought the foreign country to a stage where its costs and pricing structures are primarily influenced by market principles so that sales of merchandise in such country will reflect the fair value of the merchandise." In addition, in making these determinations "...the administering authority would also take into account the extent to which the foreign country:

(i) is opening its domestic markets to goods produced, services provided, and joint ventures and other investments by firms and individuals of the United States;

(ii) is providing copyright and patent protection to intellectual property of firms and individuals of the United States; and

(iii) has committed and is moving toward fulfilling the principles of the General Agreement on Tariffs and Trade."

Under the proposed planned market economy amendment to the law, the "actual foreign value" of any export to the United States for purposes of dumping margin calculations would be determined by examining actual costs of production of the export in that country. Where the International Trade Administration (ITA) of the Department of Commerce finds that any component of production was not included in calculating the domestic costs of the export or was not determined by market means, adjustment for that component's price would be substituted or added to the price based upon world market prices for the component.

If this system were unable to produce an "actual foreign value," an "imputed foreign value" would be determined. The "imputed foreign value" would be the average arms length sales prices of comparable merchandise (adjusted for quality, terms of sales and similar items) sold in the United States by the lowest price market economy country importer of the comparable merchandise. This is the benchmark test for measuring nonmarket economy country imports in dumping proceedings that has been proposed by the Administration. It is a better and fairer benchmark than the use of surrogate countries.

The "injury test" would apply to planned market economy countries.

Planned market economies would not be subject to countervailing duty actions and Section 201 rather than Section 406 of the Trade Act of 1974 would apply to this category of countries.

Discussion of Proposal

The fundamental problem faced by China with respect to U.S. trade law is that nations can only be classified under the antidumping and countervailing duty laws in one of two ways: either as market economies or as nonmarket economies. To date, the Commerce Department has adopted the position that China's economy more closely resembles a nonmarket economy than a market economy and has classified China as such. This classification has resulted in the imposition of high dumping margins because of the requirement under current law that the ITA use a "surrogate" country to approximate Chinese domestic prices. As the recent *iron castings* and *porcelain-on-steel cookware* antidumping investigations demonstrate, the surrogate country requirement is patently unfair to China and encourages domestic industries to file petitions against Chinese exporters whenever their exports achieve substantial penetration of U.S. domestic markets.

Even with respect to the present state of China's economic evolution, policies have been introduced and implemented that allow market forces to substantially affect the agricultural economy, to decentralize industrial management, to open enterprises to the risk of failure and bankruptcy under a trial law, to make the employment of newly-hired workers subject to a contract under which they can be fired, and to allow firms to retain foreign exchange earnings through the sale of securities to the public. China can therefore no longer be rigidly described as a pure "nonmarket economy." Simply put, steps are carefully being taken to gradually introduce market-oriented prices in the place of artificially controlled prices.

It should be noted, however, that to obtain treatment as a full-fledged *market economy* under U.S. law (as distinguished from an intermediate economy in transition from a nonmarket economy toward a market economy), China would have to be able to demonstrate a substantial degree of labor mobility, freedom of capital formation, and transferability of land ownership -- not an easy task. *But even if this effort were not immediately successful --and no one doubts that it will take many years, if ever, for China to qualify as a pure market economy -- the planned market economy category both recognizes the existing changes which have been made to China's economy while holding out the prospect of increasing acceptance of Chinese domestic selling prices as its economy becomes more market-driven.*

While the proposed intermediate category amendment to the AD/CVD laws would give countries in this new category the opportunity to justify their domestic prices, *it would not compel acceptance of the domestic price.* If, therefore, it should prove impossible to obtain cost data of sufficient accuracy and quality in any antidumping case, the "lowest import price from a market economy importer" alternative (i.e. the benchmark used for NME's) would be used instead to determine dumping margins.

If the PME amendment becomes law, it is to be expected that until China puts into place adequate cost accounting systems, it will in some cases have difficulty in assembling the necessary cost data for products which are the subject of antidumping cases. To help design and install the commonly accepted cost-accounting methods needed for this purpose, it has been suggested that China seek the help of one of the leading American accounting firms. *There is further incentive and reward to China in instituting such realistic accounting; the process will almost certainly provide Chinese managers with a much better picture of commercial efficiency and profitability than current methods.*

Since nonmarket economies are immune from the countervailing duty laws as presently applied and since the amendment would provide a full and complete remedy for any injured U.S. industry, the CVD laws would not apply. This proposal could also have the added benefit of simplifying the administration of the trade laws as they apply to planned market economy countries. Under existing law, as well as under the alternatives being considered, the ITA is required to consider domestic manufacturing costs whenever a respondent seeks to show that its particular sector of a nonmarket economy is market-driven. *The ITA's task in such a case is essentially the same as that required by our proposed amendment. Under the amendment, however, administration would be simplified by being made subject to clear and well understood procedures. This would result from the issuance of regulations setting out the guidelines and standards of proof that the ITA would employ to determine domestic costs under this amendment. The amendment, therefore, would actually be a more predictable and workable than current law or the alternatives.*

C. Review of Existing AD/CVD Law

1. Dumping

A foreign industry is said to have "dumped" goods if such goods are sold at less than "fair value" in the United States and if such sales consequently cause or threaten material injury to a U.S. industry. In general, goods are considered to be sold at less than their fair value when their sales price in the United States is lower than the price at which they are sold in the country of origin, adjusted for differences in the quality and type of goods and their conditions of sale. Where home country sales do not provide an adequate basis for comparison, fair value may be based upon the sales price of the goods in third country markets or on "constructive value," a figure computed from costs of production plus assumed overhead and profit margins. If goods in the country of origin are sold in the U.S. market at less than fair value and if a U.S. industry is threatened to be materially injured by reason of the imports, an antidumping duty is prospectively imposed and a cash deposit for future imports equal to the difference between the fair value and the U.S. price, i.e., the "dumping margin," will be required before the goods can enter the United States. In practice in the subsequent annual administrative reviews, the cash deposit is applied toward the actual dumping margin found on imports occurring during the review period.

The Commerce Department has taken the position that it is impossible to determine fair value by reference to domestic price and cost structures in nonmarket economies.

The nonmarket economy countries are generally considered to be:

1. Albania
2. Bulgaria
3. China
4. Cuba
5. Czechoslovakia
6. German Democratic Republic
7. Hungary
8. Mongolia
9. North Korea
10. Poland
11. Romania
12. U.S.S.R.
13. Vietnam

Note: Of these countries, only China, Hungary, and Romania have been granted most-favored-nation trade treatment by the U.S..

The International Trade Administration (ITA) has consistently stated that, in nonmarket economies, the government's role in establishing input costs and output prices invalidates conventional notions of cost and price information used to determine market value in developed countries. U.S. law permits fair value to be calculated by reference to a surrogate. The ITA prefers to use price information from a surrogate country, but can also construct fair value using cost information from the surrogate, adjusted for known differences in material and labor costs. The ITA is authorized to choose a market-oriented third country whose level of economic development is deemed similar to the country under investigation. Using criteria such as per capita gross national product, the ITA has found that price and cost structures in countries such as Egypt, India, Indonesia, Morocco, Pakistan, the Philippines, and Thailand are comparable to those of China. However, on several occasions, including the recent *iron castings* and *petroleum wax candles* cases, the ITA used other, substantially more developed countries, such as Italy, Japan, Switzerland and the United Kingdom as surrogates, resulting in the ITA's establishing unusually large dumping margins. A list of U.S. dumping determinations involving Chinese merchandise is attached at the end of this paper.

Various Chinese respondents have countered that certain sectors of China's economy are increasingly governed by market forces and that cost and price information supplied by those sectors should be the basis for determining foreign market value. These efforts, thus far limited to arguments that narrowly-defined sectors of the Chinese economy are governed in large part by market forces, have to date been unsuccessful. However, in the *petroleum wax candles* investigation, the ITA acknowledged that substantial economic reforms had been introduced in China since late 1984, but concluded that on balance China should remain, for purposes of that investigation, an NME country.

As previously noted, the analysis required by the ITA to consider whether a particular sector of a country's economy is market-driven -- to an extent adequate to justify ITA acceptance of its domestic prices rather than using the current surrogate test -- will have to continue so long as respondents present such position in AD proceedings.

There is agreement in many quarters that the law, as applied to NME countries, is arbitrary, difficult to administer and often unfair, but proposals to amend the law have tended to focus on administrative convenience and domestic industry concerns. Even if a surrogate country at roughly the same level of development as China, as measured by macroeconomic indices, is selected, there may be very substantial differences in cost and price structure in China and in the surrogate for any given sector or industry. This undermines in practice the theoretical basis for the surrogate country comparison method. China's cost advantage in various labor-intensive industries, for example, is very difficult to replicate in any surrogate country. In those few surrogates where the labor-related cost advantage might be similar (e.g., Egypt, India, or other developing countries), the relative cost of other inputs may differ greatly or the surrogate may not be producing the product under examination. *As a result, the use of surrogates tends to negate any advantage China may enjoy in a particular case as the lowest cost manufacturer of the goods under investigation.*

From the perspective of the ITA, administering the surrogate country approach is very difficult. Industries in free market countries often refuse to cooperate as surrogates for antidumping investigations, having learned from the example of the Finnish company that aided in an antidumping proceeding only to find itself the target of a new antidumping investigation. As the availability of appropriate, cooperative surrogates diminishes, the task of the ITA has become more cumbersome, and it has increasingly turned to using noncomparable surrogates.

In fact, criticism of the antidumping law as applied to China and other nations classified as NME countries has come from many directions. Chinese exporters object to the law because, among other things, the selection of a surrogate is often arbitrary and too unpredictable to indicate what minimum price level will be acceptable in the future. Their U.S. and foreign counterparts, in turn, express concern that the law provides China with a safe-harbor as long as Chinese domestic costs are above those of the available surrogate countries. U.S. industry also is concerned that, because the surrogate-producer process is inherently unpredictable, it is difficult to determine at the outset whether it makes business sense to file a dumping case against imports from nonmarket economies. And the ITA argues that the surrogate country approach is unworkable due to the difficulty of identifying appropriate surrogates – a problem exacerbated by the short time permitted the ITA to make its determination (most cases are completed well within a year).

2. Countervailing Duties

The purpose of the U.S. countervailing duty law is to counteract "bounties" or "grants" conferred by foreign governments on their export industries. Although there is general agreement that subsidies can distort world trade, there is far less agreement over what constitutes a subsidy or, in turn, what sort of subsidies ought to be actionable, i.e., countervailable. Indeed, the GATT Subsidies Code, while proscribing all forms of direct export subsidies, recognizes that governments legitimately provide various so-called domestic subsidies, such as regional development grants or even roads, schools and police protection. The latter form of subsidy is only proscribed under the Code if it is targeted to an industry or group of industries and if it is injurious to a foreign producer.

Our understanding is that, in the ITA's view, a subsidy is essentially a governmental intervention that distorts the allocation of resources within the economy. Since centralized economic planning is pervasive in nonmarket economies, the ITA has concluded that it is impossible to determine how resources would have been allocated if a market had operated, and has thus far refused to apply the countervailing duty laws to nonmarket economies.

Countervailing duty cases, like antidumping cases, are generally reviewed by both the ITA and the International Trade Commission (ITC). But countries such as China that are not signatories to the Subsidies Code of the GATT (or that have not assumed equivalent obligations on a bilateral basis), do not enjoy the benefit of an ITC injury test in countervailing duty proceedings. Although some nonsignatory countries, such as Mexico, have been granted an injury test by entering into a bilateral agreement with the United States, as discussed below, there appears to be little prospect that China will be able to negotiate a subsidies agreement with the

United States in the near future. Should countervailing duty laws eventually be applied to China, therefore, petitioners would only need to obtain confirmation of a subsidy from the ITA, but could avoid the burden and cost of proving injury before the ITC.

In 1984, the ITA held to its position that subsidies are market concepts, and are thus limited to market economies, when it made negative preliminary determinations in two countervailing duty cases brought against wire rod imports from Czechoslovakia. The U.S. Court of International Trade (which has jurisdiction over the ITA) reversed the ITA's decision on appeal in July 1985. The court held that a subsidy is conveyed in a nonmarket economy if a domestic industry receives preferential treatment, determined by comparing the benefits accorded an individual industry to those accorded the economy as a whole.

On September 16, 1986, however, the Court of Appeals for the Federal Circuit reversed the Court of International Trade's decision, holding that U.S. countervailing duty law does not apply to nonmarket economy countries.

3. *Restrictions on Imports from Communist Countries*

Section 406 provides a mechanism through which the President may restrict imports from so-called "communist" countries that are found to be injuring U.S. industries, irrespective of the fairness of the U.S. price of the imports.

At the time of enactment, Congress was extremely concerned that communist countries, with their centralized controls over pricing and distribution, could flood the U.S. market with imports more quickly than could free market economy exporters. Section 406 requires that three conditions must be satisfied before the ITC can make an affirmative determination and address the issue of relief. First, imports from the country in question must be increasing rapidly. Second, the domestic industry producing an article similar to or directly competitive with the imported article must be materially injured or threatened with material injury. And third, the rapidly increasing imports must be a significant cause of the material injury or threat.

If the ITC recommends a remedy, such as tariffs or quotas, the president may accept or reject the recommendation. The President's discretion under the law is sufficiently broad to permit his decision to be influenced by political considerations outside the scope of the investigation. Thus, there are substantial opportunities available to both sides of the dispute to apply pressure on the President to determine the case in their favor.

Four of the ten investigations against communist countries conducted under Section 406 have been directed against China. In two cases the ITC declined to recommend relief. However, in the case of *Clothespins from the PRC*, the ITC recommended that the President impose quotas. The President ultimately concluded that imports from China were only part of the problem, however, and instead recommended a quota under a separate proceeding against all imports of clothespins to the United States. In the fourth case, *Canned Mushrooms from the PRC*, the ITC was evenly divided on the issue of recommending a remedy, and President Carter ultimately declined to grant relief.

D. Alternative AD/CVD Law Revisions

In the last few years, the Administration and Congress have considered at least the following six alternative methods for managing dumping allegations against nonmarket economy countries:

1. Amending the AD laws to allow the use of the "average import price" from the highest volume market economy producer as the benchmark for NME country foreign value (the Heinz Bill).

2. Amending AD laws to allow the use of the "lowest import price" (adjusted for quality and terms of sale) as the benchmark for nonmarket economy country foreign value.

3. Amending the AD laws to require ITA to quickly and automatically establish a dumping margin that elevates the foreign price to 80 percent of the price of competing U.S.-made products and, at the same time, permit U.S. companies to attempt to obtain the last 20 percent of price protection by proving before the International Trade Commission that they will be injured by allowing nonmarket economy country pricing at the 80 percent level.

4. Amending the AD laws to allow the use of publicly available data and information from the surrogate market economy countries that are substituted for nonmarket economy countries to determine the foreign value of products.

5. Amending Section 406 of the Trade Act of 1974 by shifting responsibility from the President to the Special Trade Representative and easing the injury and causality standard currently provided in that section.

Senator Heinz has proposed variations of the average import price concept, proposal number one, for several years. Although some version of the Heinz plan might lend predictability to the antidumping law, it would do so at substantial cost to China, since no effort would be made to limit the fair value comparison to countries with higher costs. Thus, the high dumping margins resulting from the unreasonable surrogate selections adopted by the ITA in recent antidumping cases involving China could become the norm in future cases. The price established by Chinese exporters would have to meet the benchmark price established for such goods to avoid liability under the law.

We understand that during the 99th Congress DOC/ITA initially favored proposal number three. Congressional staff have indicated to us that many Congressmen believed that permitting prices at the 80 percent level is too generous and could not be achieved in legislation. It was suggested by staff that if the level were 90 to 95 percent this proposal might stand a chance of being accepted by the Congress, but this provided very little competitive margin for a foreign country which in fact may have much lower production costs. The Administration now favors a variation of proposal number two, the lowest import benchmark price; even this proposal would preclude the possibility that China would be able to price its goods lower than anyone else's -- even if China were in fact the lowest-cost producer.

The predictability of both the Heinz proposal and the Administration proposal could also be undermined, as import data available to the Commerce Department do not allow for differences in quality, style, or delivery times when comparing the price of Chinese goods with those of others. Accordingly, the ITA would have little guidance in determining whether the lowest import benchmark price (Administration proposal) or the average import price benchmark (Heinz proposal) reflected such differences. *There is, therefore, no reason to believe that such determinations would necessarily be more predictable than the selection of a surrogate under current law.*

Conclusion

We have found no one who feels that the current AD/CVD laws, as they apply to nonmarket economies are workable, predictable or fair. But the current proposed amendments to the law pose their own problems. As to administrability, it is respectfully submitted that the proposals currently under consideration to amend the AD/CVD laws as they are applied to NME's would do little to make the laws more workable or predictable. As to fairness, current law and the proposed amendments would continue effectively to bar Chinese goods from fair access to U.S. markets, for as soon as China achieves significant market penetration for any product for which they might enjoy a true competitive advantage, a dumping case can be filed and an arbitrary dumping margin can be imposed -- whether it be the lowest import benchmark price or the average import benchmark price -- which would eliminate that competitive advantage.

Without a change in the law, such as we have proposed today, which would recognize the significant economic reforms that have taken place in China and provide access for Chinese goods on a fair competitive basis to U.S. markets, it is futile for American businessmen to argue for increased fair access to China's markets or to expect that China can earn the hard currency with which to buy American goods and services.

Mr. Chairman, thank you for giving us this opportunity to appear before the subcommittee.

Investigations Involving Products
From
The People's Republic of China

Source: United States
Department of Commerce
International Trade Administration

Product	Initiation Date	Determination Date	Average Dumping Margin	Method of Determination	Surrogate Country	ITC Injury Determination
1. Menthol	7/2/80	4/27/81	2.5%	Sales[1]	Paraguay	Negative
2. Greige Printcloth	9/1/82	9/13/83	22.4%	Sales[1]	Thailand	Affirmative
3. Towels Shop	9/17/82	6/24/85	36.2%	Constructed	Indonesia	Affirmative
4. Mushrooms Canned	11/16/82	9/28/83	None	Sales[2]	Indonesia	Terminated
5. Potassium Permanganate	3/18/83	12/22/83	39.63%	Constructed	Thailand	Affirmative
6. Chloropicrin	5/2/83	2/1/83	58%	Constructed	India	Affirmative
7. Barium Carbonate	11/18/83	8/20/84	None	Constructed	Thailand	Terminated
8. Barium Chloride	11/18/83	8/20/84	14.5%	Constructed	Thailand	Affirmative
9. Brushes Paint	3/15/85	12/26/85	127.07%	Sales[2]	Sri Lanka	Affirmative
10. Iron Castings	6/10/85	3/19/86	11.66%	Constructed	(3)	Affirmative
11. Wire Nails	7/3/85	3/25/86	6.33%	Sales[4]	South Korea	Affirmative
12. Wax Candles	9/30/85	3/7/86	54.21%	Sales[2]	Malaysia	Affirmative
13. Steel Pipe	12/16/85	7/10/86	30.00%	Sales[4]	Argentina	Negative
14. Cookware	12/31/85	10/10/86	66.65%	Sales[4]	(5)	Affirmative

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[1] Sales from surrogate country to third country markets.

[2] Home market sales in surrogate country.

[3] Average f.o.b. values from Italy, Japan, Switzerland, Taiwan and the United Kingdom.

[4] Sales from surrogate country to United States.

[5] Surrogate countries used were Japan, Switzerland, West Germany and France.

Chairman GIBBONS. Mr. Horlick?

STATEMENT OF GARY N. HORLICK, ESQ., O'MELVENY & MYERS, WASHINGTON, DC

Mr. HORLICK. Thank you, Mr. Chairman.

For the record, my name is Gary Horlick, of O'Melveny & Myers. The views I am going to express are my own views. I represent both U.S. companies and foreign companies.

Before I get into the nonmarket side, I would like to as a preface, or urge the committee to consider that the current structure of U.S. laws and the GATT rules is outmoded. I think that the new round of negotiations offers a real chance to start from scratch and really look at these things from new.

I would suggest three questions to ask yourselves, in general, on trade laws. The first question we are going to ask is, first, what kind of private company behavior you want to regulate? Right now we have a dumping law that regulates prices. Do you want to regulate purchasing behavior, maybe? There is a whole series of questions there, it is not just amending the dumping law.

The second question to ask is what kind of governmental behavior to regulate? And, as you heard today, maybe it is not just subsidies. Maybe it is targeting. Maybe it is infant industry protection. But it is not just a matter of looking at traditional categories of dumping or subsidies.

Third is what kind of rights do we want to give workers and communities to adjustment?

I am not here to give you the answers to those questions. What I am saying is, my guess is the answers to those questions are radically different from our current structure of trade laws and from the GATT rules, and we ought to be thinking about what we should be doing to set that structure right.

That said, within the current framework we have a nonmarket law at present, and I agree with Allen Wolff that it just doesn't work—and I think you will find most people telling you that. Every case becomes its own little kind of private joke among the lawyers on both sides and the Commerce Department people about how bad it is. The results simply don't have any link to any kind of economic reality. I am not going to argue the point because everyone will tell you that.

The dumping cases are weird, the countervailing duty law doesn't apply, and no one uses 406. So the question is, how do you get a workable law?

I think there are two principles that will tell you whether you have a workable NME law. The first principle is, any country has to be able to show that it is no longer a nonmarket economy. I think the United States has to have a framework in place to encourage countries like China to liberalize their economies, go to market forces, impose upon themselves the GATT rules that will give better access for our exports. In that connection, the proposal here is useful.

Now the second principle is the toughest one. It is balancing. Whether what rule you adopt has to balance two goals. One, we have to let nonmarket economies sell here. We have to give them a chance to sell here or we are not going to sell anything there. There may be political reasons for not letting them sell here. That is a different question.

You have to balance the need to let them sell here with the need to not let them sell any product here at any price they feel like. Very simply, what you get is low-ball prices that again look very odd. I am not talking about $300 instead of $400; I am talking about $50 instead of $500. So you have to balance those two.

Now the question becomes, and I know this committee probably more than any other body has grappled with this for some years, how do you balance them? The best answer I see is the one proposed in section 124 of H.R. 3, which is not to try to measure prices. The trick is to go to an injury test. The reason for doing that, in my view, is you can never measure prices fairly in a true nonmarket economy, by definition.

I am leaving out the situation where a country has gone to market forces. But if a country is a nonmarket economy, any rule you put in, half the people you hear from are going to tell you: No. It is giving them a license to dump. The other half are going to tell you: No. It doesn't let them take advantage of their comparative advantage.

The truth of the matter is no one knows. If it is a true nonmarket economy, you never know if they are dumping. You don't know if they can make it for $50 or $500. You couldn't. Using an injury-only test avoids that. What you should do is to look at injury in the U.S. marketplace as section 124 would.

Now I would propose a couple of additions to section 124, two in particular. First, I would make it an exclusive remedy simply because I don't think dumping or countervailing makes any sense with a true nonmarket economy.

Second, I would change some of the provisions about executive branch involvement. For example, in my view, you would have the ITC determine if there is injury. There obviously would be a debate about what standard to use, but that is something this committee can handle quite easily. And then, give the USTR's office a chance to go negotiate with the nonmarket economy some sort of deal that would remove the injury. This is parallel to what happens in suspension agreements for countervailing duty cases.

The U.S. industry affected would then have a chance to say that what USTR did wasn't enough. They could take it back to the ITC. Once could go on with that. I mean, you could discuss congressional overrides or not.

My guess is, and I think most people would agree with this—most of these true nonmarket economies does not have a problem with sitting down and negotiating. What they have a problem with is figuring out how our weird dumping laws work. They would be much more comfortable with this.

That said, I would like to end with a few words on China because of the proposal that has been made. I will let my colleagues here, obviously, comment on their proposal. I think it is important to recognize moves toward marketization to the extent those are true, and also to recognize adherence to GATT principles that give our exporters access to their market.

Clearly, I am not going to give you the answer on China, necessarily. As I said, we have these gentlemen here. But it is very obvious we have to work out some sort of system of dealing with trade with China that makes sense. We can't continue to treat it in the ad hoc fashion under the dumping laws that we have so far.

There is no way of determining why mushrooms had a zero duty and some chemicals had a 200-percent duty. It just doesn't make sense. And the current system doesn't work. Maybe with some of the smaller nonmarket economies it is of more limited interest to the United States. With China, we have to do something that works.

Thank you very much.

Chairman GIBBONS. Thank you, Mr. Horlick.

Mr. FURIA. Mr. Chairman, I would like to make just a very brief remark in response to a point made by Mr. Horlick, and I think that is helpful, perhaps, to make a broader point. We agree that in a nonmarket economy it is impossible to determine what the real costs are, and it is difficult to accept any domestic price because of the pervasive impact of Government control.

What we are saying is China is different. Its economy is not yet like ours. It may never be. It is somewhere in between. And we think that a nation like China, and we think Hungary probably also fits into that definition, should be given the opportunity to rationalize those prices.

We wouldn't have to accept them. We could reject them. We could say their proof is inadequate. But what we are saying is give them a chance to prove it. Now, if they can't, then any of the benchmarks could be used for the nonmarket economy.

And I would like to say that Mr. Horlick's concept of using a 406 concept that would be nondiscretionary would be equally appropriate in our view for a nonmarket economy. We have suggested the administration position of lowest import price. But I think his concept is equally appropriate for a nonmarket economy. What we are suggesting is let's encourage a nation like China that is beginning to embrace market principles.

Thank you.

Mr. HORLICK. I, obviously, have no problem with that.

Chairman GIBBONS. Well, we look forward to examining in great detail your proposal because I know there is not a conscientious member of this committee that hasn't wrestled with this problem interminably, and we haven't come up with any answer yet. I think, perhaps, having some intermediary between those two columns that you read in the statute, one column of a market economy and one column of a nonmarket economy, is you go out and you examine the economies of the world and you find that everything is just not that black and white. That there are differentiations in between.

And we should applaud and encourage those that are moving toward market principles to move that way. So I think, perhaps, you have got a good suggestion. We would like to look at the details of it a little more and get a little more comment on it, but I can tell you we are going to take it very seriously.

Mr. Richardson, do you have anything you want to say before you leave here?

Mr. Richardson. No, thanks, Mr. Chairman, except that it is a pleasure once again to appear before this committee. I think it is the first time I have ever been here that it wasn't on something like welfare or Social Security. But it only underscores the reach of this committee into the economy and the lives of Americans.

And I would only add that I was very pleased to hear your remarks just now as to the potential merits of this approach. It is one that has grown out of a lot of work on the part of Mr. Furia, Mr. Brody, myself, over the past year or so in trying to cope with the problems arising out of the United States-China trade relationship and the recognition that this trade can be of such enormous future importance to us.

Thank you, Mr. Chairman.

Chairman Gibbons. Thank you.

Mr. Furia. Mr. Chairman, if there aren't any questions, I would like to ask for——

Chairman Gibbons. I don't know, I hadn't finished.

Mr. Furia. Oh. I beg your pardon.

Chairman Gibbons. I am sure Mr. Jenkins and Mr. Frenzel have some questions.

Mr. Jenkins. I regret that Mr. Schulze is not here because he has spent a great deal of time on this particular issue as far as nonmarket economies are concerned. I intend to study your statement very carefully.

Now who is the Committee for Fair Trade With China? Do the companies that belong to that?

Mr. Furia. A company that I am the chief executive officer of, Furia, Samuels & Co., is the founding member of the Committee for Fair Trade With China. United Technologies, manufacturers of Carrier air conditioners, Sikorsky helicopters, Otis elevators, and the largest exporter of goods to China, has authorized us to tell you that they support our position. So does Bechtel, the construction company.

Mr. Jenkins. Does your committee at the present time have the support of these other companies, or are they also members?

Mr. Furia. Our organizational meeting, whereby membership would have been conveyed, was scheduled for Monday at 12:30, at which time Washington had a bit of a problem with a snowstorm. So we were only able then to contact the members by phone and to get their support to authorize us to say that they did support this amendment and this position.

The other companies, as I said, United Technologies, Bechtel, John Fluke Co., which is the only remaining American company that makes electronic measuring and testing devices and is very active in China, also has authorized us to say they endorse our testimony.

Mr. Jenkins. Potential member?

Mr. Furia. Yes. Well, we hope that we will have many more members. This was put together rather quickly. We have been doing it for 10 days. We are very pleased that United Technologies, Bechtel and John Fluke have joined.

Mr. Jenkins. I just normally ask that question. I have no problem with committees that are put together quickly. We have several down at the White House right now. There is a lot of corporations existing down there that I haven't even had time to go through yet.

But one part that I would ask you, and I think there is a little difference of opinion here. You indicate in your statement, as far as ascertaining the margin—let me see if I can find your statement. Under the proposed planned market economy amendment to the law, the actual foreign value of any export to the U.S. for purposes of dumping margin calculations would be determined by examining actual cost of production of the export in that country.

Now, as I understand your statement, you are saying that is practically impossible to do. Is that right?

Mr. **Horlick**. You can always examine the persuade costs. The question is whether they mean anything. The question would be, for Commerce Department, whether market forces are such that those prices in that country are meaningful.

I think what you will find, probably, in some sectors of the Chinese economy they are meaningful. Commerce Department has found in others they aren't. And it would become a judgment call, case by case, which I think is what Mr. Furia is looking for.

Mr. **Furia**. Yes. If I may comment on the meaning of the words in my testimony, Mr. Congressman. What we are saying is that you give the Chinese a chance—not just the Chinese, any nation that fit this definition would be given the opportunity to rationalize their domestic prices to prove that the cost of producing the goods were less than the price in the United States.

Mr. **Jenkins**. So you would place the burden on them? They would have the burden of establishing, rather than for us to examine or any disclosing party.

Mr. **Furia**. That is right.

Now let me, if I may explain further how the law is that we are proposing. Let's assume that in the case of a particular Chinese factory they are able to show the cost of raw materials, the cost of labor, and the cost of several things, but they don't depreciate their building, which is very possible in China, or the energy comes from a pipe that is connected to a coal-fired plant and they don't pay for it.

What we are saying is that, if there is a component that is subsidized or that they don't include in their cost development, we can impute a value for that. We can either use the world price. We know what energy is worth. We can impute that value. Or we could even use the administration concept. We could use the lowest import price for that particular component.

What we are saying is they shouldn't be completely deprived of the opportunity because one component isn't costed. We would substitute that cost and then come up with that price.

Mr. **Jenkins**. I see.

Mr. **Furia**. And if they don't make the proof, they go back to the benchmark.

Mr. **Horlick**. I would add that Commerce has on at least three occasions I can think of made fairly serious studies of whether an economy in a given product had reached market level. On all three they decided it hadn't, but it was pretty close calls on some of them.

The point I am making really is, if the exporter can't prove it, then don't waste your time trying to show what the costs are or not, because they are just not meaningful, and just look at injury.

I know that you have been working on this for some years.

Mr. **Jenkins**. Yes. Right.

Mr. **Horlick**. That is how I get there.

Mr. **Jenkins**. Well, thank you. Thank you, Mr. Chairman.

Chairman **Gibbons**. Mr. Frenzel?

Mr. **Frenzel**. Thank you, Mr. Chairman.

Gentlemen, thank you for your interesting testimony. Mr. Richardson, it is always a pleasure to see you here. You did spend a lot of hours in here on family assistance programs, as I recall.

Mr. **Richardson**. Sorry I never caught up with the quality of your doodling.

Mr. **Frenzel**. No. No. Not so.

I think it is an interesting proposition, and I share the chairman's opinion that it is worthy of serious consideration.

As I understand your testimony, Mr. Furia, you would like countries which are tilting toward privatization or perhaps even in transition to have a greater chance than accorded to countries that we traditionally thought were pretty well locked up. Is that the basis of your proposal?

Mr. **Furia**. Yes. What you do is, you make an initial determination as to whether a nation fits into one of those three categories. We would add a category: market, nonmarket or planned market economy.

Mr. **Frenzel**. Your proposal is to give a better chance or an incentive to those countries which seem to be coming closer to systems that we understand?

Mr. **Furia**. Yes. You put it very well. It is both, a better chance and an incentive.

Mr. **Frenzel**. I, as well as the chairman, have been troubled for a long time by the fact that economies which we think are very tightly controlled, like Brazil or possibly India and Korea, get normal treatment from us and the recognition of the standard antidumping treatment, whereas they may be no more open than a China or a Hungary, or at some future date, perhaps, a Bulgaria.

I think you have offered us an interesting new way to look at it and to spread some incentive on the record. If we are to look at your proposal, there may be some nervousness about the administration of the proposal. Do you want to comment on that?

Mr. **Furia**. Well, first of all, as to those other nations that you just mentioned, we envision, although it is not specific and perhaps it should be clarified in the language—we would envision that this would apply only toward nonmarket economies which have instituted reforms to an extent adequate to then sort of be upgraded to this middle level. We don't assume that we take a market economy and say, well, Sweden subsidizes so many of its costs and free medical care and free this and free that, et cetera, that it should now be called a planned market economy.

Mr. **Frenzel**. You are not taking anybody backward?

Mr. **Furia**. That is right.

By the way, one comment that I found very interesting in the course of discussing this kind of thing with the Chinese has been their observation that an awful lot of things are subsidized in nations like Sweden, for example, and obviously a pure market economy would be hard to find, except perhaps Hong Kong.

But in the case of China, there is clearly a major difference between it and the Soviet Bloc, in spite of statements made by Mr. Gorbachev recently. Those are statements that have not been implemented.

Mr. HORLICK. The test, from an administrative point of view, is whether you can run a normal case, and so far the administration has been able to do that with countries like Brazil. There is enough there so you can do a normal dumping or countervail case, and the trick would be at what point China crosses that line.

Mr. FRENZEL. As I understand the present law, which we would like to be rid of, it allows a nonmarket economy to invite inspection by the Department of Commerce if it believes in the particular instance its company or industry is market driven, does it not?

Mr. FURIA. Yes, that is right.

Mr. FRENZEL. It always comes a cropper on the basis of components that can't be evaluated. Is that the case?

Mr. FURIA. Well, that is what has happened under current law, and perhaps it would be a good question for Mr. Holmer and Mr. Kaplan when they testify. I think under the law they propose they still envision that if a nation says that a particular sector of their economy is market driven they would give them that opportunity to prove that that is so. But my understanding is that once you come to a component which is not included in their price, that is the end of the investigation.

What we are saying is if you have a component that is subsidized, you substitute a price. You can't have free energy, you have to include a price for energy, for example.

Mr. FRENZEL. Sure.

Mr. FURIA. So that is a major difference. And the other is that we feel that because of the *Georgetown Steel* case you end up with a problem with the countervailing duty law. If a nonmarket economy makes that argument, we think you would have to apply the countervailing duty law.

Mr. FRENZEL. And right now, China—China being your prime example—is going to be compared to some country with which one can make no comparison in any antidumping case. Has it not been compared with European countries in some of its antidumping cases?

Mr. FURIA. That is right. In the back of our testimony we have a chart, in the back of the full testimony. If you look at page 10, you will see that it has been compared to Japan, Switzerland, West Germany, France, the United Kingdom, Italy.

Mr. FRENZEL. I am sure it is flattered.

Mr. RICHARDSON. Mr. Chairman, may I have one further word with respect to the issue of administrability touched on by Mr. Frenzel? One thing we think we would do through the introduction of language along the lines of our proposal would be to give the International Trade Administration a specific basis for addressing what kinds of cost data would be deemed sufficient to satisfy the requirement of proof.

They could publish guidelines, and those guidelines would then be used by the Ministry of Foreign Economic Relations and Trade at the Chinese end to inform Chinese companies what kinds of cost accounting systems they needed to put into place in order to be able to address these questions.

So it might be in the beginning that relatively few products or industrial sectors could satisfy these criteria, but as time went on, and perhaps with the help of American accounting firms, they would be able better to do so, and of course in the meanwhile, they would also be furthering their own progress on a broader scale toward a rational pricing system.

Mr. **Frenzel**. Would all of you agree that this proposal could be laid over existing law, or any of the proposals now pending?

Mr. **Furia**. Yes.

Mr. **Frenzel**. Mr. Horlick?

Mr. **Horlick**. Logically, this would go in addition to whatever law you had for nonmarket economies. I think this would be as administrable as current law, certainly.

Mr. **Frenzel**. Sure.

Mr. **Horlick**. It would require more resources to administer than Mr. Shultz's proposal for true nonmarket economies, but it may be worth it for the United States to put those extra resources in as an incentive to countries.

Mr. **Frenzel**. China is a particularly good example of a country with whom we are trying to expand our overall relationship, and if China considered it worthwhile as well, perhaps we would.

As one of the original inspectors of the famous Polish plant which made those golf carts, I have wrestled like others over the years with this problem, and there is no perfect solution. But if, in addition to a workable solution, we can put some incentive into the law, it seems to me that that is a worthwhile objective.

I thank you for raising the question, and my time has long since expired.

Chairman **Gibbons**. Thank you, gentlemen. We appreciate it very much.

Mr. **Furia**. Mr. Chairman.

Chairman **Gibbons**. Yes, sir?

Mr. **Furia**. Could I ask for unanimous consent to allow us to have included in the record a draft bill, a question and answer sheet that might answer some other questions?

Chairman **Gibbons**. Certainly. I think it would be appropriate. We would like to have it. It would help us.

Mr. **Furia**. And lastly, a letter from the Chinese ambassador to various administration and congressional——

Chairman **Gibbons**. Without objection, those will all be included in the record.

Mr. **Furia**. Thank you very much.

[The material follows:]

Committee for Fair Trade with China

Proposal for

A BILL

To amend the Tariff Act of 1930 to establish import price evaluation and foreign market value adjustment procedures for nonmarket economy countries and planned market economy countries.

SECTION 1.— IMPORT PRICE EVALUATION AND FOREIGN MARKET VALUE ADJUSTMENT FOR NONMARKET ECONOMY COUNTRIES.

(a) In General.— Subsection (c) of section 773 of the Tariff Act of 1930 (19 U.S.C. 1677b) is amended to read as follows:

"(c) NONMARKET ECONOMY COUNTRIES.—

"(1) IN GENERAL.—IF—

"(A) the merchandise under investigation is exported from a nonmarket economy country, and

"(B) the administering authority finds that the information submitted or information that would be submitted by such country does not or would not permit the foreign market value of the merchandise to be accurately determined under subsection (a),

the administering authority shall determine the foreign market value of the merchandise on the basis of the lowest import price at which merchandise, or similar merchandise (adjusted for quality, terms of sales and similar items the administering authority deems necessary or appropriate) produced by eligible market economy producers is sold at arms length in the United States during the period of the investigation.

"(2) NO ELIGIBLE MARKET ECONOMY PRODUCERS.— If the administering authority determines that there is no eligible market economy country, the foreign market value of the merchandise shall be the constructed value, determined in accordance with subsection (e), of comparable merchandise in any country other than a nonmarket economy or planned market economy country.

"(3) SPECIAL RULE FOR FUNGIBLE PRODUCTS.— If the administering authority determines that the merchandise is fungible, taking into account whether it is sold by weight or volume without significant product differentiation in specifications, the foreign market value of the merchandise shall be determined from the factors of production incurred in producing the merchandise including, but not limited to, hours of labor employed, quantities of raw materials required, amounts of energy and other utilities consumed, and representative capital cost including depreciation, which factors shall be valued from the best available evidence in a market economy country or countries deemed to be appropriate by the administering authority, and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings and other expenses, as required by subsection (e).

SECTION 2.--IMPORT PRICE EVALUATION AND FOREIGN MARKET VALUE ADJUSTMENT FOR PLANNED MARKET ECONOMY COUNTRIES.

(a) In General.—Section 773 of the Tariff Act of 1930 (19 U.S.C. 1677b) is amended by adding at the end thereof the following new subsection:

"(d) PLANNED MARKET ECONOMY COUNTRIES.—

"(1) IN GENERAL.—IF—

"(A) the merchandise under investigation is exported from a planned market economy country, and

"(B) such country so elects,

the administering authority shall determine the foreign market value of the merchandise on the basis of the actual costs of manufacturing the merchandise in such country during the most recent period for which sufficient information is available, and where the administering authority finds that the price or cost of any component of the merchandise has not been or cannot be determined by market factors in such country, the administering authority shall substitute a representative world price for such component.

"(2) ALTERNATIVE FOREIGN MARKET VALUATION METHOD.—If the administering authority is unable to determine under paragraph (1) the actual foreign market value of the merchandise under investigation or if the foreign country at any time so elects, the administering authority shall determine the foreign market value of the merchandise in a manner consistent with that of nonmarket economy countries as required by paragraphs (1), (2), and (3) of subsection (c).

"(3) COUNTERVAILING DUTY PROVISIONS NOT TO APPLY.—The countervailing duty law, section 303 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1303 (1982), shall not apply to any country determined to be a planned market economy country by the administering authority.

"(4) SECTION 406 TO APPLY.—The provisions of section 406 of the Trade Act of 1974, 19 U.S.C. § 2436 (1980), shall not apply to any country determined to be a planned market economy country by the administering authority.

SECTION 3.— DEFINITIONS.

(a) DEFINITIONS.—Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) is amended by adding at the end thereof the following new paragraph:

"(18) ELIGIBLE MARKET ECONOMY COUNTRY, PLANNED MARKET ECONOMY AND NONMARKET ECONOMY.—

"(A) The term 'eligible market economy country' means any foreign country which—

"(i) is not a planned market economy country or a nonmarket economy country,

"(ii) where comparable merchandise is produced and exported, and

"(ii) which the administering authority determines is appropriate for use in calculating foreign value, taking into account factors including, but not limited to—

"(I) whether the comparable merchandise from that country is subject to an antidumping or countervailing duty order,

"(II) a suspension agreement under section 734 or 704 is in effect with respect to such merchandise,

"(III) any international agreement which affects prices or level of imports is in effect with respect to such merchandise, or

"(IV) whether the level of imports is de minimus.

"(B) PLANNED MARKET ECONOMY COUNTRY.—

"(i) IN GENERAL.—The term 'planned market economy country' means any foreign country whose government has been determined by the administering authority to have announced and to be implementing economic reforms of a kind that, when fully implemented, will have brought the foreign country to a stage where its cost and pricing structures are primarily influenced by market principles so that sales of merchandise in such country will reflect the fair value of the merchandise.

"(ii) OTHER FACTORS TO BE CONSIDERED.—In making the determinations under clause (i), the administering authority shall take into account the extent to which the foreign country—

"(I) is opening its domestic markets to goods produced, services provided, and joint ventures and other investments by firms and individuals of the United States,

"(II) is providing copyright and patent protection to intellectual property of firms and individuals of the United States, and

"(III) has commited to and is moving toward fulfilling the principles of the General Agreement on Tariffs and Trade.

"(C) NONMARKET ECONOMY COUNTRY.—The term 'nonmarket economy country' means any foreign country that the administrating authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise and which is not a planned market economy country as defined in subparagraph (B).

"(D) DESIGNATIONS IN EFFECT.— Any determination that a country is a eligible market, planned market or nonmarket economy country shall remain in effect until revoked by the administering authority. The administering authority may make a determination under subparagraphs (A), (B) and (C) at any time.

"(E) DETERMINATIONS NOT IN ISSUE.—Any determination made by the administering authority under subparagraphs (A), (B) and (C) shall not be subject to judicial review, or otherwise contested, in any investigation conducted under subtitle B.

COMMITTEE FOR FAIR TRADE WITH CHINA

Planned Market Economy Proposal

Q and A Sheet

February 20, 1987

The Coalition

What is the CFTC?

> The CFTC is a group of American corporations that is interested in promoting fair two-way trade with China. The CFTC believes that it is in the best interest of the United States to take the lead in developing fair trade policies that will govern trade between China and the United States.

How did CFTC originate?

> The CFTC was founded in January of 1987 by Furia, Samuels & Company (shortly after it completed, with Milbank, Tweed, Hadley and McCloy, a year-long study of U.S.- China trade relations for the government of the People's Republic of China) and Charls E. Walker Associates, Inc. FSC and CEW have invited other American companies to join CFTC. Elliot L. Richardson has agreed to serve as Special Counsel. The purpose of the CFTC is to seek Congressional and Administration support for trade policies and regulations which will encourage greater two-way U.S.- China trade, recognize the significant economic reforms China has made to date and encourage the continuation and implementation of the reforms.

What is the basic position of CFTC?

> The current U.S. antidumping and countervailing duty (AD/CVD) laws are unfair because a basic rule of international trade -- the rule that the nation with the comparative advantage, (i.e. the producer of the best product for the money) should have a competitive edge -- is being violated. This occurs whenever the lowest cost producer is a nonmarket economy country (NME) and is hit with a dumping case -- which occurs whenever meaningful penetration of the U.S. marketplace is achieved.

Dumping

What is dumping?

> Dumping is selling a product in the United States at a price lower than that which the product is sold for in the country in which it is produced.

How does the current dumping law work?

> •For market economies.
>
> The DOC will examine the price at which the product is sold in its domestic market and compare that to the price at which the product is being sold in the United States. If the domestic price is higher than the U.S. price the difference is determined to be the dumping margin.
>
> •For nonmarket economies.
>
> Generally a surrogate market economy country(ies) is selected and the price of the product in that country is determined to be the price for the NME involved; the dumping margin is calculated from the surrogate-generated figures.

Why is the law different for NME's in the first place?

> NME prices are generally 'administered prices' (that is, prices set by the foreign government) and are considered inherently unreliable for the purpose of determining dumping margins. Therefore, alternative methods need to be employed to arrive at a suitable foreign value.

Why is this unfair to some NME's?

> Any method that does not give the foreign country the opportunity to show that the cost of making the product in that country is less than the price for which it is sold abroad by definition deprives that nation of any competitive advantage that it may have in the marketplace.

Alternatives to Current Law

What proposals have been offered to change the law and how would they do so?

- Senator Heinz (R. Pa.)

Would set the benchmark foreign value at the average import price from the largest market economy importer.

- Administration (Commerce/ITA)

Would set the benchmark foreign value at the lowest import price from any market economy importer.

- Planned Market Economy (CFTC)

Would require examination of the cost of making the product in China rather than any artificial benchmark from a substituted country. Substituted prices would only apply for those components of the product when Chinese prices were missing or not valid. If the Planned Market Economy failed to make the proof sufficient to satisfy the International Trade Administration (ITA) of the U.S. Department of Commerce, the NME benchmark would apply.

The CFTC Proposal

What is the basic description of the CFTC proposal?

If the foreign country involved meets the definition of a planned market economy it would have the option in any antidumping proceeding to elect to have the actual manufacturing cost of the product be determined by examination of the factors of production of the product during the most recent period for which such information is available. Where the price or cost of any component of the product has not or cannot be determined by market forces, a representative world price will be substituted.

What is a planned market economy country?

A planned market economy country is a country that has announced and is implementing economic reforms that, when fully implemented, would enable that country to operate on market principles. Additionally, in making the determination, the administering authority would take into account the extent to which the country has made commitments to: (i) provide market access to U.S. goods and services, (ii) provide copyright and patent protection, and (iii) commit to the principles of the GATT.

Won't the CFTC proposal unrealistically raise China's expectations about increased trade?

It is to be noted that the planned market economy which is the subject of the dumping case *elects* to have its domestic costs examined. The purpose of this feature of the amendment is to avoid detailed examinations where the possibility of success is remote, and avoid raising expectations generally in China and elsewhere that this law will provide relief in all cases and under all circumstances.

What about the fact that China does subsidize much of its industry?

This apparently is not totally true for all industries and it clearly is not true for all factors of production. World market prices would be substituted for those factors of production that are subsidized.

What if one of the components of production (like energy) is free?

This is where the component nature of the CFTC approach would be activated and an appropriate world price for energy would be added to the Chinese cost figures.

What if a Chinese enterprise fails to make the proof required by the CFTC amendment?

During the course of the DOC investigation the foreign country can elect essentially to call off the the detailed examination of its cost data and have the backup benchmark method used, and in effect be treated like a nonmarket economy country.

Will China develop into an export-based economy like Japan or Singapore if the CFTC proposal is adopted?

Probably not. China has enormous pent-up demand and is running a trade imbalance that is projected to remain at least through this century. China is also likely to allow a relatively high rate of consumption compared to Japan. Simply stated, the largest potential market for output of China's factories is her own people, and one of the best long term markets for many U.S. goods and services -- assuming that tariff and non-tariff barriers are removed -- is China.

What will China do for the United States if the CFTC proposal is adopted?

> China will have to recognize that it must provide access to its markets if it cares to earn foreign exchange in the markets of the United States. Additionally, China will soon have to provide patent and copyright protection and otherwise work towards achieving GATT trading principles if she is to resume her seat.

Why is the CFTC law better and fairer than the existing law or the other proposed amendments?

1. It eliminates the valid basis of criticism by the Chinese that the U.S. discriminates against or treats China unfairly.

In general, China argues, correctly, that U.S. AD/CVD laws are unfair to China. Passage of this law removes the basis for China's criticism of a U.S. law which has treated it unfairly. This in turn makes it possible for the U.S. to confront China on patent, copyright, access to markets, and other issues by which China treats U.S. industry unfairly.

2. China gains an opportunity to get the benefits of higher sales if it is in fact the lowest cost producer.

An artifical benchmark is used only if China fails to submit adequate proof that its actual domestic costs are less than the price at which it sells a product in the U.S., or elects not to make such proof.

Specifically, this law provides an opportunity for China to gain the benefits of being a lowest cost producer of products provided that it can satisfy the ITA that its costs equal -- or are less than -- the price at which the products are sold in the U.S. If an enterprise is unable or unwilling to engage in that exercise, the backup benchmark measure would be used.

China can elect to prove that its domestic price is rational, thereby avoiding an artifical benchmark domestic price based on the average import price from the highest volume producer (Heinz proposal) or the lowest import price (Commerce Department proposal). The law treats China fairly by giving it a chance to prove that its domestic price is rational and derived from market forces, rather than through administrative fiat.

3. It provides an opportunity for China to gain needed hard currency for purchases of foreign technology, equipment, services, and products.

China has a great interest in buying certain goods, services and technology from the U.S. With passage of this law China can be told that she now has a fair opportunity to earn hard currency with which to do so. Many have seen the impact of the last 18 months' belt-tightening in China caused by a reduction in China's hard currency earnings.

4. It provides a basis for the U.S. to require access to China's markets, patent and copyright protection and, generally, equally fair treatment from China.

China has made some progress in these areas and this proposal will provide an external reason why such efforts should continue in China.

5. Most importantly, it provides encouragement and incentive for the economic reforms in China to continue.

All of us who have done business in China have witnessed the effects of the economic reforms and the beginning of decentralization. Generally speaking, it amounts to a better business climate in which pragmatism, economics, and competition have begun to replace ideology and where decisions to buy, sell, or form joint ventures are made by people who resemble businessmen instead of politicians.

Our Impressions of China's Views

How do the Chinese feel about the AD law?

> The Chinese believe that the AD law is unfair and discriminates against China. They understand that it prevents Chinese products from achieving the meaningful market share they often really deserve in the U.S. markets, and that the AD law will have an increasingly severe adverse impact on their ability to earn foreign exchange.

Why don't they lobby to change it?

> China's position is that it does not lobby the United States government or any other government, for that matter. China will comment upon U.S. policy and law but *it will not suggest specific changes* that they would like to have adopted or enacted. China believes that such matters are the domestic business of the U.S. and that China should not meddle with the internal affairs of the U.S. or any other nation (the unspoken corollary, of course, is that the U.S. should not meddle in the internal affairs of China). If the U. S. adopts a policy or enacts a law that curtails China's access to U.S. markets, China believes that the proper action for it to take is to respond by curtailing purchases of U.S. goods and services.

How do they feel about this proposal?

We have asked Chinese officals in Beijing as well as the Embassy for their views. They have answered only that America should do what it believes is best to correct the unfairness in the law. (Attached is a letter which Ambassador Han Xu sent to Congress and the Administration in September. See, in particular, comments on the AD/CVD laws).

Administrability

How many enterprises would be able to make the proof required by the CFTC law now?

This is uncertain, but probably not very many at this time. However, the regulations and legislative history to the proposal will provide China with the standards that they must meet to fully take advantage of the law. The exercise will probably require the assistance of a U.S. big eight accounting firm, but will be worth it in terms of increased market access. Additionally, the adoption of rational cost accounting will have the added benefit of helping Chinese managers understand the choices necessary to make market-based decisions and ascertain what their products cost to produce.

How would they make the proof when so many inputs are free or subsidized?

Basic inputs like labor and many materials are currently measurable, others may not be measurable without the aforementioned assistance of an accounting firm, and still others may not be measurable in the near term and representative world prices will have to be substituted until they can be measured.

What would be required for them to make the proof?

Institute rational cost accounting which is in itself helpful to the factory managers most of whom currently have no idea what it costs to make their goods.

What is the CFTC response to the Reagan Administration's expressed concern about administrability of the bill?

The Planned Market Economy amendment may actually be easier to administer than current law or the two proposed alternatives (see White Paper for full discussion).

COMMITTEE FOR FAIR TRADE WITH CHINA

The attached *China Business Review* clip is a reprint of a letter which Han Xu, Chinese Ambassador to the United States, sent on September 7, 1986 to Secretary of State George Shultz, Chief of Staff Donald Regan, Secretary of the Treasury James Baker, Secretary of Commerce Malcolm Baldrige, Secretary of Agriculture Richard Lyng, Secretary of Labor William Brock, United States Trade Representative Clayton Yeutter, and all members of the Senate Finance and Foreign Relations Committees and the House Ways and Means and Foreign Affairs Committees.

US Laws Threaten the Future of China-US Trade

Han Xu

Although China-US trade has strong momentum behind it, the present trade volume still falls far short of the potential of both markets. Unfortunately, a number of US trade laws and legislation now being considered by the US Congress threaten to restrict China's exports to the US, and thus jeopardize the prospects for growth in bilateral trade.

Not only are these laws and amendments inconsistent with the US government's oft-stated support for free and fair trade, but they conflict with US commitments—as provided in our bilateral trade agreement—to accord China "treatment no less favorable than is afforded to any third country or region" and to take into consideration that China is a developing country.

A telling example of this inconsistent policy toward China is a proposal by the House of Representatives to amend Section 406 of the US Trade Act of 1974. This proposal would underscore the discriminatory effect of the provision on countries with ideologies different from those of the US by allowing petitioners to single out countries classified as nonmarket economies and subject them to import relief actions (under standards that are not applied to other countries) if their exports to the US are increasing. This is particularly unfair to China since it is a latecomer to the US market, a fact that is often overlooked when the US imposes restraints on China's exports.

Another threat to China's exports is the US antidumping law and proposed changes to it. In handling antidumping cases against China, the US currently treats China dogmatically as a nonmarket economy. We stro[illegible] believe that it is not appropriate to continue rigidly labeling China as such. China has come a long way from a unitary planned economy to one that combines planning with responsiveness to market forces. In fact, some of China's economic sectors are already largely governed by those forces. It is fitting and proper that changes in US trade laws and policies concerning China should reflect price reforms and other economic changes taking place in China.

The US dumping law as applied to China is contrary to what are generally considered the basic characteristics of law—consistency, stability, predictability and fairness.

The US antidumping law as applied to China is contrary to what are generally considered the basic characteristics of law—consistency, stability, predictability, and fairness. Since the US determination of dumping margins is not based on the real cost of the Chinese product, and as a surrogate is selected only after a petition has been filed, it is impossible for China to predict what the arbitrary "fair value" will be. Faced with the constant threat of antidumping petitions, China's exporters are forced artificially to inflate prices. This, in turn, unfairly restricts China's access to the US market. Moreover, in certain antidumping cases against Chinese products, the Commerce Department unfairly chose suppliers who were at stages of economic development by no means comparable to ours, resulting in the determination of inflated dumping margins.

Rather than addressing the discriminatory effect of current US antidumping laws, certain pending proposals would erect even harsher barriers to China's exports. One such proposal would adopt an artificial benchmark in antidumping proceedings. This approach would ignore the fact that, as a result of recent price reforms, prices of Chinese commodities in most sectors now reflect their costs and enterprises are taking responsibility for their own profits and losses. We are particularly opposed to using the US average import price as a benchmark, because it would severely erode China's competitive advantages in labor and raw materials.

Since 1972 China has run a large cumulative trade deficit with the US. Though the growth rate of some Chinese exports to the US seems high, their total volume is small. Since China's ability to import depends on its ability to export, any barrier to China's exports to the US market will adversely effect our imports from the United States.

It is in the interest of both countries to maintain good long-term economic relations. China continues to pursue an independent foreign policy and to adhere to the principle of equality and mutual benefit in its business dealings with other countries. The US has recognized China as a friendly nonallied country. We hope it will treat us as such and eliminate policies that harm our bilateral economic and trade relations and impede China's progress in achieving economic reform.

Han Xu has been China's ambassador to the United States since April 1985. This Commentary is adapted from a letter sent by Ambassador Han to some members of the US Congress and administration officials in September.

Chairman GIBBONS. And now we will get back to the government. The U.S. Department of Commerce. Mr. Kaplan. The Office of U.S. Trade Representative. Mr. Holmer.

Have you all got anything you would like to say?

Mr. KAPLAN. We have a few things, yes.

Chairman GIBBONS. All right. Well, just go right ahead. Fire away.

STATEMENT OF GILBERT B. KAPLAN, DEPUTY ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Mr. KAPLAN. Thank you, Mr. Chairman. Mr. Frenzel. Thank you for inviting us here today to testify.

I am going to talk primarily about the dumping and countervailing duty law, and Mr. Holmer will speak more broadly about the entire bill.

I would ask, first, that we focus in this upcoming legislative session primarily on the entire bill, and not on the dumping and countervailing duty law.

I know there are a tremendous number of amendments both within H.R. 3, and kicking around town to change the dumping and countervailing duty law, but I would like to cite to you a number of statistics on what we have been doing since 1980, which I think show that the law, for the most part is working, and that the changes really ought to be at the edges and not right in the middle of the whole thing, taking the heart out of it, and ending one trade law that does work pretty well.

We have had 658 antidumping and countervailing duty petitions filed since this function came to the Department of Commerce.

Chairman GIBBONS. How many?

Mr. KAPLAN. Six hundred and fifty-eight. Just since I spoke to you last year, we have had 58 new petitions. We have initiated 26 new cases, and we have done a broad agreement on lumber, and an agreement on semiconductors, based primarily on antidumping and countervailing duty cases.

We have 50 investigations in progress, and we are administering 219 antidumping and countervailing duty orders.

Bringing a case and pursuing an administrative review——

Chairman GIBBONS. What do you do on Sunday afternoon? It sounds like you have used up about all the time.

Mr. KAPLAN. Yes. I try to go home to my wife for a few hours on Sunday, but, other than that, I do these cases.

Let me talk a little about the proposals which the administration is putting before you. I think what this committee, and what Mr. Schulze, and what the Congress in general wants, is a predictable nondiscretionary and fair nonmarket economy bill.

I think the nondiscretion is important in the sense that you want to be able to provide for U.S. industries some sure valve for relief when it is appropriate.

At the same time nondiscretion implies predictability and it provides fairness to the Chinese or the Soviets, or anybody else who wants to trade in our market.

But to get that, you have to have some kind of standard, I think, beyond an injury standard, and some sense of what is fair trade and what is not fair trade. And to get that you have to have a benchmark within the law.

After going around and around on this with this committee, and many other people, we have come back to at least where the administration started, and proposed again lowest import price.

We feel that for most nonmarket economies to trade in this market, since their goods on the whole are at the lower end of the spectrum, that provides a reasonable benchmark for them.

We also feel that this provides predictability, and without that predictability, you are simply not going to be fair either to the domestics or to the foreign exporters.

The other major provision in our bill relates to anticircumvention. Since I have been at the Department of Commerce, which has now been about three years, we have seen many cases brought successfully, and then slight changes in the merchandise which gets you out of the scope of the order.

The way the law is now written, you cannot just change the order to cover them even though you should, because you mess up the injury side of the case and you are immediately hauled into court with some kind of injunction.

So we have proposed three kinds of changes in the way orders can be written to provide that we would be able to cover these attempts at circumvention.

One would provide that we can cover kits and subassemblies within an original case along with the finished product. So, for example, if you have a case on cellular mobile telephones from Japan, you do not only have to cover the finished phone, you can cover the phone and all its parts and subassemblies within the same case.

The second part of the anticircumvention provision provides that we can cover these kits and assemblies even when they are put together finally in a third country.

In other words, if the Japanese have an order against them on cellular mobile telephones, and then, instead of finishing it in Japan, they take the parts of it into Taiwan, and bring it in from Taiwan, we would be able to cover that under the original case.

It is akin, though different, to the whole diversionary dumping idea, and we would ask that you look at that pretty carefully, and see if it might not cover enough of what you are thinking about in terms of diversionary dumping, that we could move you off that a little bit because we are still concerned about it.

Third, we want to be able to cover within an original case a good which is slightly altered in order to get out of the order. For example, we have a case on pipe which is unthreaded, and then they thread the pipe.

Under Customs rules, that is a substantial transformation, and right now, we cannot change that order after the case to cover that slight alteration, so we would like to be able to do that also.

I would like to mention one thing that we are committed to in the new GATT round, which I think is also very important in terms of the antidumping and countervailing duty law. The administration has made a commitment to seek more severe penalties for recidivist dumpers in the new round. This is something which I think is critical, we have seen its criticality in the semiconductor situation, and we have seen it in steel.

You have companies that over and over again try to use their excess capacity to get deeper and deeper into our market, and they are willing to absorb dumping duties, once, and then twice, and then three times, and not change their behavior.

So this commitment that we have made in connection with this bill would hopefully lead to a new consensus, internationally, that recidivist dumping has to be handled differently from the normal dumping case, and that more severe penalties could be put on unilaterally and without retaliation by any country that is suffering from recidivist dumping.

We look at that in a way as a response to the calls for a private right of action. We think a private right of action is extremely dangerous.

Just a few weeks ago, Mexico unilaterally, and without really giving any notice to the U.S. companies, put a 100-percent duty on caustic soda from the United States. That 100-percent duty in itself is problematic, but imagine how difficult it would be if it were not only a duty applied prospectively, but a requirement for retroactive payment from the exporters of this caustic soda.

We are extremely fair in our application of the antidumping law. Some people, I think on your committee, would say too fair, but foreign countries, once they get into this act, could cause enormous difficulties to U.S. producers, particularly if they start going beyond the imposition of duties, and calling for private rights of action. We would have very little opportunity to contest that if we had a bill of that sort of our own.

The next proposal of ours relates to indirect tax passthrough, and how the indirect taxes are treated under current law.

We have traditionally permitted an adjustment, if there is a higher indirect tax on home-market sales than on export sales.

The law is a little unclear on this, but we have said that if there is a tax on the home-market sale, and not on the exports, we will subtract that indirect tax from the home-market price to get a fair sort of tax-neutral comparison.

The Court of International Trade now interpreting the dumping law has said that we should not permit that adjustment, except to the extent that the tax is passed through to the ultimate consumer.

This means that the Department of Commerce has to make a determination of the degree of passthrough of this tax to the consumer, and it is an almost impossible exercise to partake in. It requires us to do an econometric analysis of supply and demand. I do not even understand it. We have some economists, hopefully, that understand it, and we have to look at what amount of the indirect tax ultimately gets passed through to the consumer. It is far more work than it is worth to our Department, or to any domestic producer, if we are going to change how taxes are treated, and change the entire system of international trade as they relate to direct tax and indirect taxes.

We should not try to do it within the context of the dumping law because it will paralyze the dumping law, and that is why we have sought this amendment.

The fourth proposal we have would solve a glitch in the current law concerning certain preexisting orders, which later become eligible for an injury determination.

Section 303 of the Tariff Act of 1930 requires that an injury determination is required before we can levy countervailing duties on a product, when two conditions are met. The product is duty-free and the country is a GATT signatory.

Since the ITC has refused to conduct an injury review in certain preexisting cases, our amendment would clarify that the ITC does have such statutory authority. Without that amendment, we would probably be required to revoke eight cases on Mexican products, a case on Trinidad and Tobago wire rod, and in the future some Israeli cases.

We think these cases have come on the books as a result of unfair trade, and we should not have to revoke them. One other proposal that I would like to briefly note here relates to the possible downstream product monitoring. This is part of H.R. 3.

We currently have four very expensive monitoring programs on the books—steel, lumber, machine tools, and semiconductors. They are extremely burdensome, they take a great deal of time, but they are probably worth it for these absolutely critical products.

They are probably not worth it for every product that is imported into the United States, and under the provision, with a very low threshold, we would have to do downstream product monitoring on a very regular basis along with the ITC.

I seriously question whether it is worth the money, frankly, in times of budgetary restraint, and the enormous resources required to do that.

Having made all these statements, I want to emphasize that we want to work with this committee to come up with a bill that we can all support at the end of this process.

I want to emphasize that we think the dump and countervailing duty law is essentially working, and we hope you will, for the most part stay away from it, except at the edges, and I look forward to working with you over the next few months.

Thank you.

[The prepared statement follows:]

TESTIMONY OF GILBERT B. KAPLAN
DEPUTY ASSISTANT SECRETARY FOR
IMPORT ADMINISTRATION
DEPARTMENT OF COMMERCE
BEFORE THE
SUBCOMMITTEE ON TRADE
U.S. HOUSE OF REPRESENTATIVES
FEBRUARY 26, 1987

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today to discuss the proposals for trade reform regarding the antidumping and countervailing duty law.

The Administration has submitted a broad trade law reform proposal which we believe will improve the competitiveness of United States industries and workers, while at the same time promoting increased international trade and remaining consistent with our international obligations. Clearly, there are numerous proposals for changes to the antidumping/countervailing duty law being considered this year and numerous ones in your bill. But I hope this will not be the main focus of our attention. I do not think that this is the area of trade reform on which to concentrate. The reason is simple---by and large, this law is working.

As I have stated to you in the past, it is my strong belief that the antidumping and countervailing duty law provides effective relief from unfair trade to U.S. producers. U.S. companies regularly use the potential remedy available through this law, as evidenced by the fact that 658 antidumping and countervailing duty petitions have been filed between the beginning of 1980 and the end of 1986.

Since I spoke before you last year, 58 new petitions have been filed. Already, in fiscal year 1987 we have initiated 26 new cases, and we currently have 50 investigations in progress. This is in addition to the 219 antidumping and countervailing duty orders and suspension agreements that are now in effect. This is not the picture of a law from which no one believes they obtain relief.

Let me say a word about special interest legislation. If you look at many of the proposals being considered it is evident that they primarily benefit one or two industries. Clearly, they would help those industries, but if you compare that help to the overall wrong being done to the country and the economy by these provisions, I think the balance favors not passing them.

Nevertheless, I recognize that there is fine-tuning of the law which would improve it and I welcome the opportunity to work with you regarding legislative proposals. While I have said that I believe that the law is effective for the most part, as in most laws, I see some changes that could make the law more administrable and update it at the margins. It is these changes that the Administration has concentrated on in our proposal. They concern nonmarket economy countries, anti-circumvention, indirect tax pass-through, and old orders that become eligible for an injury test.

Since Alan Holmer has discussed some of the major problems we see in H.R. 3, I would like to concentrate on our proposals first and then supplement Mr. Holmer's comments with a few of my own.

Perhaps the most important issue in the antidumping area today is how to make the antidumping law more administrable and more predictable for nonmarket economy (NME) country cases. Currently, the law states that we should compare the price in the United States to prices or costs for similar merchandise in another, market economy country. We have learned that we are frequently unable to obtain price or cost information from surrogate country producers, who have no incentive to cooperate with us since they are not under investigation. Therefore, we have had to develop fallback methodologies.

Experience has also shown us that the margins may vary dramatically from case to case depending on which country and which type of data we are able to use. As a result, the NME country typically is unable to predict whether or not a particular U.S. price will be considered a dumped price, and is unable to structure its activities accordingly. In addition, an American industry faced with low-priced competition from an NME producer is unable to determine whether the antidumping law would provide a remedy.

What this Committee wants, I believe, is a predictable, fair, non-discretionary nonmarket economy remedy. Our proposal provides that. To avoid uncertainty and reliance on often inadequate information, we are proposing a much clearer benchmark for determining whether NME imports are fairly priced---the lowest import price to the United States of the eligible market economy country. To determine which country is eligible, we would take into account such factors as import levels of the merchandise under investigation and whether the merchandise from a country is subject to an antidumping or countervailing duty order, suspension agreement or other agreement that may affect price.

In addition, our proposal takes care of the situations where there is no eligible market economy country, for example because sales are below cost, by basing foreign market value on constructed value in a market economy country in these instances. Furthermore, our provision codifies the recent decision of the Court of Appeals for the Federal Circuit that the countervailing duty law does not apply to NMEs.

A second concern that we have found to be increasingly problematic in recent years is that of circumvention. It sometimes seems that we investigate a product and place an antidumping or countervailing duty on it only to see the foreign producer alter the product in such a way as to remove it from the order so that the U.S. producer ultimately receives no relief. Therefore, our proposal would allow the Department to clarify the scope of an order to deal with three sets of circumstances. These are: 1) where the foreign producer imports parts or components and assembles, or imports incomplete or unfinished articles and completes, in the United States, the class or kind of merchandise covered by the order; 2) where the merchandise under investigation is sent to a third country where a small amount of value is added before it is sent to the United States; and 3) where the product subject to the order is altered in some minor respect, perhaps so that it falls into another tariff classification.

In all these situations, the proposed change to the law would clarify that the merchandise being entered is still within the scope of the preexisting antidumping or countervailing duty order. In this way, no new injury finding will be necessary and we will remain consistent with our international obligations.

The third significant problem we have had to face lately involves the fairly technical, but extremely important, issue of indirect tax pass-through, or foreign tax offset adjustment, in antidumping cases. In antidumping calculations, one of the adjustments provided for in the law, in an effort to take prices to the ultimate purchaser in the United States back to the factory gate, is to add to this price taxes that are paid and rebated or not collected because the merchandise is exported. This adjustment ensures that the rebate or exemption from such taxes does not lead to the creation of dumping margins.

The problem we are currently facing is that the Court of International Trade has said that we must interpret the law literally and add to the export price only the amount of taxes that are "passed through" and actually included in the price of the product when sold in the home market. This calculation can only be done theoretically, using econometric analysis. It is an onerous task and the resulting estimates may be completely arbitrary. Since it is not an absolute figure, there will be endless wrangling by all parties in every case. This does not lead to increased administrability or predictable results. It does not make the law work.

More importantly, the GATT states that no product shall be subject to antidumping or countervailing duties by reason of an exemption from or rebate of taxes borne by the product when sold in the home market. The international consensus, whether or not true by an economist's standards, is that indirect taxes may be rebated without contributing to unfair trade. That the United States may rely more heavily on direct, rather than indirect, taxes and, hence, may be seen by some as disadvantaged under these rules, does not mean that we can violate the rules.

Our proposal would revise the statute to allow us to deduct the entire amount of the taxes paid from the foreign market value. This is what we are currently doing, so margins would not be lowered. It is administrable and it is consistent with the longstanding, internationally-accepted economic convention regarding indirect taxes.

Our fourth proposal would solve what we see is a glitch in the current law concerning certain pre-existing orders on products which at a later date become eligible for an injury determination, which the International Trade Commission (ITC) has told us it has no authority to conduct. Section 303 of the Tariff Act of 1930, in the Administration's opinion, requires that a duty-free product from a GATT signatory receive an injury determination before we can levy countervailing duties on that product.

When we initiate an investigation on a product which satisfies these two criteria, there is no problem--the ITC performs an injury determination and we investigate whether the product is subsidized; if both findings are affirmative, we issue an order. The problem arises when one of the two conditions was not met at the time of the original investigation so an injury determination was not made by the ITC, but subsequently is met after the order has taken effect. This can happen either because the country joins the GATT (as Mexico has recently done) or because the product became duty-free (as is the case with wire rod from Trinidad and Tobago and will happen with roses from Israel in 1995). In such instances, the ITC has refused to conduct an injury review, saying that it does not have the statutory authority. Our amendment would clarify that the ITC does have such statutory authority, so that we can remain consistent with our international obligations (since in these cases, we believe our GATT obligations require an injury test) and yet assess countervailing duties to which U.S. industries are entitled, having successfully brought an unfair trade case.

Apart from these four proposals, I would like to state for the record that we intend to work for change within the GATT during the Uruguay Round negotiations to provide for increased penalties for recidivist dumpers. In my view, the private right of action proposal in H.R. 3 would be very problematic and would more or less end trade if other countries adopted it. For example, the Government of Mexico recently announced a preliminary antidumping finding against U.S. caustic soda producers of close to 100 percent, despite the fact that they never informed the U.S. producers and sent no questionnaire to them. Imagine what it would mean if the Mexican government not only set prospective antidumping duties, but also established retractive damages for the U.S. producers to pay.

A private right of action provision would also violate our GATT obligations and bring swift retaliation upon us. At the same time, however, I certainly recognize the problem caused by repeat offenders and want to work to make this unattractive to foreign companies.

Let me now echo some of Alan Holmer's comments and add some of my own. I remain convinced that the natural resources provision in H.R. 3 is not in the best interests of this country. In my opinion, this provision is incorrect from an economic standpoint: subsidies which are broadly, or generally, available do not distort the allocation of resources within a country. In essence, this proposal countervails comparative advantage. I have personally heard all of our major trading partners speak against the theory espoused in this provision at GATT Subsidies Code meetings. We would almost certainly be challenged in the GATT and soon face a finding against us. The Government of Canada initiated dispute proceedings against us merely for investigating whether stumpage constituted a subsidy and the panel would have made a ruling, absent our settlement of this trade problem.

The proposal on diversionary dumping contained in H.R. 3 is also on our short list of unacceptable proposals. Apart from its GATT illegality, it is unadministrable and effectively would require us to use data which would not be reliable. I cannot support a provision which calls for me to use data that is out of date and inaccurate, and, in most cases, not specific enough to be of any practical value if we were truly trying to derive an accurate valuation of the potential amount of third country dumping.

One other proposal, as currently worded, is worthy of brief note here, primarily because of the extreme amount of money it would require in this era of fiscal restraint, given that it would probably be of only limited help to U.S. industries. This provision concerns downstream product monitoring. While this proposal may have a laudable goal, it would be a very expensive method by which to gather a minimal amount of useful information. I already administer four monitoring schemes, on steel, semiconductors, machine tools, and Canadian lumber.

Data collection under this provision is a problem, given the fact that the products subject to our orders often do not align neatly with Tariff Schedule statistics. The Commerce Department, in 14 days, could not begin to analyze thoroughly the market conditions described in the provision and would probably be forced to rely on allegations in the petition. There would be no adequate time for the respondents to present well-reasoned arguments why monitoring was unwarranted or to sue if they believed the monitoring was unjustified and constituted harassment. Given that it is not difficult to gather the information on which to base a successful petition, I question whether the additional money we would spend solely on monitoring is an efficient use of the government's resources.

Having made these statements, however, I want to reemphasize what I said at the beginning of my testimony. I believe that we have developed sound proposals that will improve the antidumping and countervailing duty statute and we look forward to working with you and your staff to craft a bill that we can all support.

Chairman Gibbons. Go right ahead, Mr. Holmer.

STATEMENT OF ALAN F. HOLMER, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. Holmer. Thank you, Mr. Chairman. I will be very brief.

When you look at the dumping and countervailing duty laws, and the administration's response to them, there are a few themes that I think become clear.

The first is, as Mr. Kaplan has noted, we believe the laws are being administered aggressively and effectively.

Second, many of the proposals that are before the committee are ones that would violate our international obligations under the GATT, or the subsidies code, or the dumping code.

And we are concerned about that in large part because throughout the course of your hearings, and informal discussions that have ensued, there was a very strong desire to have the United States lead and bring along the rest of the world in establishing a new international trading order.

We support that objective, and that is why we are pushing forward strongly with the Uruguay round of trade negotiations. But in our view, the last thing that we should be doing, if we want to maintain a leadership position internationally, is to make formal commitments that we walk away from whenever they become inconvenient. The second reason why we are concerned about any GATT, or subsidies code, or dumping code inconsistency is because violation of those is not cost-free.

Retaliation is no longer an idle threat, as reflected recently by the Canadian retaliation against Christmas trees, books, computer parts, semiconductors, and other products in response to relief that we provided in the shakes and shingles case; and the EC retaliation against U.S. exports of lemons and walnuts in the section 301 citrus case.

When our trading partners detect a violation by the United States, they go for the jugular.

Finally, Mr. Chairman, we believe we have an enormous stake in shaping fair and sensible international rules for dumping and subsidies, and it really reflects the golden rule of international trade—we do it to them; they will do it to us.

Mirror action by our trading partners affecting U.S. exports is also no longer an idle threat. The U.S. leads the world in the number of dumping cases that have been filed against it.

And with 50-percent countervailing duties in effect on U.S. corn exports to Canada, and the recent completion, as Mr. Kaplan noted, of the first Mexican dumping case on U.S. chemical exports, with a dumping duty of a hundred percent, and the possibility of a European countervailing duty investigation of U.S. corn gluten feed, what once was largely theoretical has become very much a present day reality.

And having said that, I would like to underscore what Mr. Kaplan said about our desire to work with you. We have up before the committee this 1,600 page bill now, of which we will have copies of this available for all the members of the staff in this final new printed form—I see some eyes lighting up—and we will be at your side, maybe sometimes even more than you would like, and available to work with your staff evenings or weekends through that entire process.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF ALAN F. HOLMER
GENERAL COUNSEL
OFFICE OF THE U.S. TRADE REPRESENTATIVE
BEFORE THE INTERNATIONAL TRADE
SUBCOMMITTEE OF THE
HOUSE WAYS AND MEANS COMMITTEE
FEBRUARY 26, 1987

Mr. Chairman, Members of the Subcommittee, I appreciate the opportunity to testify before you today on reform of the antidumping and countervailing duty laws.

The Administration wants to work with you to strengthen American global competitiveness. I know that the Congress has been deeply concerned, too, by the impact of the trade deficit on factories and farms across the nation. I know that, out of frustration, some Members have advocated drastic unilateral measures to restrict imports. The Administration has resisted such measures, out of a conviction that import restrictions would ultimately be harmful to American interests.

But, as a result of this debate, we have narrowed our differences. There is growing recognition that raising new import barriers could have destructive consequences for American competitiveness. At the same time, in response to Congressional concerns, the Administration has moved decisively and aggressively to address the trade deficit.

Last September, after a punishing series of all-night negotiations, Ambassador Yeutter won agreement from our trading partners to launch a new round of multilateral trade negotiations, the Uruguay Round. We are now pushing forward in Geneva on the new round. We expect these negotiations to strengthen and expand the GATT rules and to shape the international trading system for the 21st century. At the same time, building on the historic Plaza Agreement and another agreement just this past weekend, Secretary Baker has coordinated a series of actions by the G-5 nations to address the high value of the dollar and to encourage greater exchange rate stability.

We have also responded aggressively to Congressional concerns about unfair trading practices. At the direction of the President, USTR has used section 301 of the Trade Act of 1974 to attack foreign trade barriers, to pry open overseas markets for American exporters, and to improve dramatically protection abroad of intellectual property. In our own market, as Mr. Kaplan notes in his testimony, the Commerce Department and the U.S. International Trade Commission have conducted an unprecedented series of antidumping and countervailing duty investigations to ensure that American industries receive timely and effective relief against dumped or subsidized imports.

Mr. Chairman, we now have an opportunity to reshape our laws and to ensure American competitiveness into the next century. Last week, the President sent to Congress a 1600-page competitiveness initiative. Our hope is that Congress and the Administration can work together to enact measures that will strengthen American global competitiveness. Our bill may not go as far as some would like. It may go too far for others, including those countries who maintain unfair barriers to American trade. But the most important aspect of the bill is that it represents one more step in the long and productive working relationship between Congress and the President.

Mr Chairman, I would like to turn now to the proposals to reform the antidumping and countervailing duty laws. In large part, we can enforce existing law aggressively because it is consistent with the international rules. Consequently, our imposition of antidumping and countervailing duties does not cause harm to American exports through foreign retaliation or mirror legislation, and does not reduce the U.S. Government's credibility in trade negotiations.

While for the most part the antidumping and countervailing duty laws are working well, we are proposing a number of important amendments. We urgently need your help in revising our import relief procedures against imports from non-market economies. These procedures have broken down and must be fixed. In addition, we are proposing a number of measures to prevent circumvention of antidumping and CVD orders. These measures are intended to close several gaps in the law that have been exploited by clever importers.

In formulating our proposals and reviewing anyone else's, we have asked the following questions:

1. Is the proposal consistent with our international obligations as set forth in the GATT, the Antidumping Code, and the Subsidies Code?

2. Will the proposal facilitate the competitiveness of U.S. industry?

3. Will the proposal enhance our leverage in the Uruguay Round and other international trade negotiations?

4. Will the proposal provoke costly retaliation against U.S. exports?

5. Will the proposal invite our trading partners to enact mirror legislation, to the detriment of U.S. exporters?

We hope that the Committee will keep these same questions in mind as you try to develop your trade legislation.

I would like to turn now to a few of the major proposals contained in H.R. 3.

1. Anti-Circumvention

There have been several proposals, including section 136 of H.R. 3, to create a remedy for so-called "diversionary dumping."

The Administration has strongly opposed the diversionary dumping proposals that have been introduced to date. Such measures would violate the Antidumping Code, be exceedingly difficult to administer, and risk mirror legislation against our exports.

Quite simply, the GATT and the Antidumping Code do not permit a signatory to take actions of the type contemplated in H.R. 3 to penalize so-called diversionary dumping. Under the GATT and the Code, the focus of an antidumping inquiry is on the home and export prices of a "like product." (*See* GATT Article VI; Antidumping Code, Article 2:1.) An input into a finished product that has been substantially transformed is not "like" the finished product. Therefore, imposing additional duties because of an allegedly unfairly priced input is inconsistent with GATT and Code obligations.

The Administration bill, however, adopts a GATT-consistent approach that will address an important element of the diversionary dumping problem. Our bill would prevent circumvention of antidumping orders through the shipment of incomplete products to third countries for final assembly. If a foreign company ships a product to a related party in a third country, where it is subjected to minimal transformation, and then exported to the United States, the product would be treated as having originated in the original supplier country. This will prevent foreign companies from evading antidumping orders by putting the final finishing touches on a product in a third country and then claiming that it is a product of that country.

2. Non-Market Economy Imports

We also want to work with the Committee to develop an effective remedy against unfairly traded imports from non-market economy countries. Almost everyone, domestic producers and non-market economy exporters alike, agrees that our current system of remedies with respect to imports from non-market economies does not work as well as it should. Current law is so arbitrary and unpredictable that a domestic industry contemplating an import relief petition and a non-market economy exporter seeking to price goods for the U.S. market both face the same problem--

neither can accurately predict what constitutes "fair market value" under the law.

For this reason, the President has proposed enactment of a new measure of fair value in his Competitiveness Initiative. We believe that our proposal will fix many of the problems arising under current law and will provide simple and effective guidance to U.S. industries and non-market economy exporters.

3. Private Right of Action for Dumping

The Administration remains strongly opposed to proposals to create a private right of action for dumping. Section 138 of H.R. 3, for example, would authorize a U.S. producer to bring suit in the Court of International Trade to recover damages for economic losses resulting from dumping.

This amendment would represent a clear violation of our GATT obligations and would undercut our credibility in the Uruguay Round negotiations. Article 16 of the Antidumping Code is unmistakedly clear on this point. It states: "No specific action against dumping of exports from another country shall be taken except in accordance with the provisions of the General Agreement as interpreted by this Agreement." Accordingly, the GATT and the Code permit only one remedy for dumping -- the imposition of a duty to offset the margin of dumping. H.R. 3 would violate this rule by authorizing the courts to award damages for dumping. If this amendment were enacted into law, our trading partners will retaliate against our exports. If we restrict imports or impose unfair punitive sanctions on foreign businessmen, other governments would retaliate against our goods and our businessmen. It is that simple.

Apart from its clear inconsistency with international law, the amendment raises a host of practical problems. First, United States exporters are often vulnerable to antidumping actions by our trading partners. We should think twice before exposing our corn, corn gluten, potato, kraftliner paper, semiconductor, and chemical producers to increased foreign antidumping penalties.

Second, this amendment is grossly unfair to foreign businessmen and is likely to backfire against U.S. petitioners by complicating current antidumping procedures. Since dumping calculations turn on complex accounting determinations about which reasonable people can differ, companies frequently are not aware that they are dumping. In addition, because the GATT Antidumping Code is designed to permit a speedy determination of dumping, U.S. antidumping investigations are conducted under tight time constraints and are not subject to the Administrative Procedures Act. Our antidumping procedures are sufficient to justify the limited penalty of an offsetting antidumping duty, but are wholly insufficent as a basis for awarding millions of dollars in damages. Hence, if Congress amends the law to award damages on the basis of antidumping findings by the Commerce Department and the ITC, these findings will be struck down by the courts unless Congress also amends current administrative procedures to provide elaborate due process protections. This will have the effect of slowing down current antidumping proceedings and undercutting the ability of U.S. industries to obtain expeditious administrative relief.

Finally, court dockets already are too full. Unlike Commerce, the courts do not have expertise in dumping. It will cost more and take much more time to pursue a private right of action than the present administrative remedy. We don't think you should add more cases in an area the courts are not well equipped to handle.

4. Natural Resource Subsidies

We oppose this amendment because it would violate our international obligations and therefore subject our exports to retaliation. Article 11 of the GATT Subsidies Code refers to domestic subsidies "granted with the aim of giving an advantage to certain enterprises . . . either regionally or by sector." While this language is arguably vague, its interpretation by our trading partners is not. At a recent meeting of the GATT Subsidies Code, every single major trading partner said that countervailable subsidies were those provided only to a specific industry or group of industries. Enactment of the natural resource subsidy provision in H.R. 3 would assuredly and quickly be challenged in the Code, and a panel would conclude that it falls outside the internationally accepted definition of a countervailable subsidy.

More importantly, this provision is contrary to not only the Code, but sound public policy. Broadly available subsidies do not distort the allocation of resources within an economy. Consequently, they do not artificially encourage or discourage production or investment, which is the principal harm caused by government intervention in the marketplace.

More practically, if the United States violates the specificity test, we put our own governmental practices at risk. Like all governments, we intervene in the marketplace. But unlike other governments, we rarely channel benefits to specific industries. The specificity test provides a safe harbor for high tech firms, which benefit significantly from government funding of universities and defense spending; farmers, who benefit from government-funded dams, irrigation projects, and cooperative extension services; aeronautics and space industries, which benefit from defense research and development projects; manufacturing industries, which long benefited from regulated oil and natural gas; and all businesses that used accelerated depreciation and the investment tax credit in calculating their taxes.

If we departed from the specificity text to impose countervailing duties on other governments' generally available subsidies, we would proclaim an open season on our own such subsidies. American businessmen, farmers, and exporters would be the losers.

Mr. Chairman, I appreciate the opportunity to testify before you today. I would be happy to answer any questions you or the Members of the Subcommittee might have.

Chairman GIBBONS. Well, we know that you are true professionals, and we know that you will work hard.

Let me say, as I look at these dumping and countervailing duty laws, particularly the countervailing duty laws, it is my feeling that the GATT is sort of a unanimous consent organization, and that unless there is somebody in the GATT that is willing to push and to get rid of these things, we are going to be plagued with them to a greater extent all the time.

Frankly, I am willing to push, and I do not worry about mirror legislation as long as we are really getting at the subsidies, the harmful subsidies.

And I still believe that one of the greatest threats to a open, free, competitive trading situation is the use of subsidies, no matter how heavily disguised some of them may be.

And all I am trying to do is to set a higher standard for subsidies, and if it catches any of our subsidies, then let's get our act in order rather than going on down the road sinning.

Now I realize when you get over into agricultural products you are going to have a lot of subsidies, and they are very large.

But let's talk about a current and ongoing case. What about the European Airbus? Why have we suddenly backed off? Do you mean to tell me there are really no subsidies in the European Airbus? I think it would shock the Europeans if they thought there were no subsidies in the European Airbus.

Mr. KAPLAN. I have had some informal discussions with potential domestic petitioners, but frankly no case has ever been filed, so I do not know for sure what the subsidy picture would look like.

I know that there have been some administration discussions about airbus, which Mr. Holmer may be familiar with.

Mr. HOLMER. Mr. Chairman, the newspaper accounts that we have all read in recent days about airbus are fundamentally accurate. There was a U.S. delegation that went to various capitals in Europe over the course of the last two weeks. There is very substantial U.S. concern about the situation we have there.

There have been some mixed signals that have been provided to the U.S. Government by the industry in that case, and the result has been that the United States has not said, fine, we are going to let this case go and we are not going to worry about subsidies.

It is true that we have decided to take a marginally less confrontational approach to the Europeans by addressing the subsidies code problem, not in a section 301 context, which is highly confrontational, but through the subsidies code and the aircraft code.

Chairman GIBBONS. You heard the testimony of the previous witnesses about their proposal on China. Are you prepared to make any observations on that about the emerging nonmarket economies, or the emerging market-based economies?

Mr. KAPLAN. The planned economies, I believe, as they call them.

Chairman GIBBONS. Yes. The planned economies.

Mr. KAPLAN. I have met with Mr. Richardson and that group a few times, and I have at least some questions about their proposal which I do not think have been resolved yet.

I do not think it is particularly workable. I think what you have is a very bizarre hybrid of different kinds of things which are calculated more to push the Chinese perhaps toward a market economy position than to be a trade law which would provide relief to our industry.

I think it is a very innovative sort of plan. I do not think it will work as a trade law. It would work if our goal is to perhaps try to encourage the Chinese to change their economy. I do not even know how well it would work to do that, but I think it is more directed at that than at being a trade law.

The main problem is, we are supposed to dig into the Chinese economy and decide what is a market part of it, and what is a nonmarket part of it.

We have sent people to China for weeks to try to sort that out, in response to cases where people asked us to do it, and it is a futile exercise. It does not make any sense.

Chairman GIBBONS. Well, is that not true of all other economies? They are all kind of mixed. We classify Yugoslavia as a market economy, do we not?

Mr. KAPLAN. Yes, we do.

Chairman GIBBONS. Yes. Well, we classify Brazil as a market economy. Maybe it is.

But do we not really have to look at the bona fides of all of these cases, or, do we? Are we just to take that list that is in the statute as——

Mr. KAPLAN. I think for the most part we have called Communist countries nonmarket economies and left it at that. I am not sure what you get by trying to look at the bona fides with a microscope in every single case.

You are not necessarily going to lower or raise the margin. There is a perception in this group I think that this would lower their rates of duty, so it would encourage them to move toward being called a market economy. I do not think that is true at all.

Chairman GIBBONS. Well, I have looked at a lot of economies that called themselves market economies, and there is so much Government intervention in the system, that I do not see how anybody can say they are market economies. Some of them are some pretty respectable governments.

I believe our current system is just too much dependent upon what we put in the statute as being market economies and nonmarket economies, and I want to tell you, that probably got 5 minutes of consideration when it was put in the statute, maybe not even 5. I was sitting about over there when we put that thing in there, and there was very little discussion during that executive session in which we looked at the economies.

And I think we thought they were more illustrative, and to get us off of a hot spot, because we really did not know that much about the economies of the world at that time. The committee had been as far as Baltimore when we made that decision.

But I am not convinced, now, that the things we call market economies are really market economies, and some of the things we call market economies are really not market economies.

I do not know how we really do justice without looking at the bona fides of their economies, and I would think that it would be to our long-range advantage to encourage people to move toward market economies.

You all just take the list, is that it, in the statute?

Mr. **Kaplan**. Well, we look in each case at whether an economy is a nonmarket economy or a market economy, and the Chinese have come in a number of times now and said they should be called a market economy.

We have looked very closely at that, and under current law, and under the administration proposal we would continue to do that. What I object to in the proposal the last panel was talking about is this concept of finding a bubble of capitalism, or a bubble of market-oriented economy within a larger nonmarket economy.

That is just a futile exercise in my view and an enormous amount of work that is just not going to get us anywhere.

Chairman **Gibbons**. Well, even in this economy there are parts of it that are market, and there are parts of it that are administered.

I think you would have to call the agricultural program a nonmarket economy, if you were honest about it. It is so dependent upon, or some parts of the agricultural program are so administered that they have got nothing to do with cost.

Mr. **Holmer**. And as a result, one of our trading partners that would want to bring a case against U.S. agricultural exports that are subject to various subsidies would probably be able to do so.

Chairman **Gibbons**. Well, what is wrong with that?

Mr. **Holmer**. That is what the subsidies code and the international rules are all about. I do not want to go around creating business for those that want to bring cases against U.S. exports, but if that is——

Chairman **Gibbons**. No, but we have got to be fair. We have got to say, you know——

Mr. **Holmer**. I agree, Mr. Chairman.

Chairman **Gibbons**. You know, the corn, wheat, and rice. Market economy? That is a bunch of garbage. You know, it is a highly subsidized, highly controlled, government-dominated price administered system.

Mr. **Holmer**. My only point is, to the extent that you have a bubble of a nonmarket sector within a market economy, the countervailing duty law can address that relatively effectively.

Mr. **Kaplan**. For example, in the Brazilian steel cases where the Brazilians have built up a large steel industry, largely government funded, we found very, very high subsidies on those companies.

Chairman **Gibbons**. But we call Brazil a market economy, do we not?

Mr. **Kaplan**. Yes, we do, but where they intervene in the economy and interfere in it, that is classically a subsidy which we countervail.

It is just when the whole economy is totally controlled, that we really cannot treat it in that same way. We cannot analyze it in that same way for purposes of our trade cases.

Chairman **Gibbons**. Mr. Frenzel.

Mr. **Frenzel**. Mr. Chairman, I want to thank the gentlemen for their testimony today, and in advance for a lot of work that is going to take place in the next couple of weeks.

One of the antidumping amendments which you suggested we do not adopt is the private action for civil remedies.

Can you explain to the committee, again, what the GATT problem is there.

Mr. **Holmer**. Yes. The GATT problem is that under the GATT and particularly under article 16 of the Dumping Code, a government can impose dumping duties in order to offset the dumping that has occurred. It is not intended to be punitive and, therefore, it is our view that under the current GATT rules and the Dumping Code, you are not permitted to impose double duties or triple duties or create a private right of action for dumping that may have occurred.

We are sensitive to the problem and that is one of the reasons why we have indicated and placed on the agenda for the new round the whole question of multiple dumping.

The one other concern that we have—in terms of the proposals before the Committee—is that it would subject innocent U.S. purchasers to litigation for, as I read it, dumping that may have occurred up to 5 years before. You have a U.S. importer who is going to be held liable based on whether he knew or had reason to know that he was buying dumped goods. And we believe that is a very problematic standard to have imposed under U.S. law.

Mr. **Frenzel**. Mr. Kaplan, anything to add?

Mr. **Kaplan**. No. I think that says it very well. I wrote in my testimony that you would more or less stop trade and I really do feel that enormous numbers of purchasers who face that kind of exposure would just say, "Well, forget it. We're not going to engage in this kind of thing. It's too dangerous."

Mr. **Frenzel**. What involves the purchaser?

Mr. **Holmer**. I'm sorry.

Mr. **Frenzel**. How does the purchaser get involved?

Mr. **Holmer**. Well, the language in H.R. 3 refers specifically to the importer or the consignee.

Mr. **Frenzel**. So, in the hallowed tradition of American jurisprudence, you sue the one with the most money or the most accessible one or the attachable assets.

Mr. **Holmer**. And if you are a lawyer and you want to avoid a potential malpractice suit, you file against everybody: the manufacturer, the exporter, the importer, everybody that you can reach under the statute.

Mr. **Frenzel**. OK. What in your proposal would give any confidence to those who have been critical of either the speed or the justice of the current system? What would give them the confidence that the system will act better?

Mr. **Kaplan**. I think the most unjust system that I have seen is a case going to completion which immediately is rendered useless by slight changes in the product. We have seen this in a variety of high-tech kind of cases. We have seen it in steel cases. We need an ability to change the scope of orders in limited ways after a case is finished or during its course so that all this expenditure by petitioners is not rendered useless. And that is exactly what this anticircumvention provision is meant to do.

Mr. **Frenzel**. I appreciate that. Anything else?

Mr. **Kaplan**. The non-market-economy provision obviously is meant to address an area where there has been a lot of criticism and a law that is essentially broken.

Mr. **Frenzel**. To be sure. But we are not talking about a lot of business are we?

Mr. **Kaplan**. I do not have the figures here, but obviously China trade is increasing and Soviet trade is increasing and China trade over the next 10 years everyone thinks it is going to increase an enormous amount. We have had a lot of non-market-economy cases and it is certainly a factor in many products.

Mr. **Frenzel**. But you did not like the suggestion that was tendered earlier, the intention of which was to make life a little easier for China.

Mr. **Kaplan**. No, I didn't. I do not think it is predictable. I do not think it is workable. I think it has a lot of nontrade concerns embedded within it. We have tried to keep it solely a trade statute. I do not think it would work for domestic industry in many instances because it is immensely complicated and I am not sure that it would really meet the goals of the Chinese either. It looks on its face like it would. But when you look into how the Chinese candle sector works and see what its real cost of production is, I think you might find much higher margins than we currently find in our current cases.

Mr. **Frenzel**. You know, we get a lot of complaints from industries that allegedly have difficulty with the dumping laws because they take too long and by the time anything happens, the markets are lost. Is it not true, however, that the laws provide for a posting of a bond in relatively short amount of time?

Mr. **Kaplan**. In dumping, a bond can be posted in 160 days after the filing, and in countervail, in 85 days. I do not know of any quicker legal process in any area of the U.S. law or administrative procedure that try to deal with something this complicated. I think it does work relatively expeditiously.

Mr. **Frenzel**. Are those bonds a part of the determinations in most instances?

Mr. **Kaplan**. Yes.

Mr. **Frenzel**. And they are assessed?

Mr. **Kaplan**. Yes.

Mr. **Frenzel**. Okay. Mr. Chairman, I have no further questions.

Chairman **Gibbons**. Let me ask you about 201. You all are involved in the administration of 201, aren't you?

Mr. **Kaplan**. Mr. Frenzel already asked.

Chairman **Gibbons**. Alright, Mr. Chairman. This morning we had criticism of 201 in that some alleged that the case is tried in the ITC and then you have to try it if you an affirmative action and then you have to try the same thing over again in the administration. Would you respond to that criticism.

Mr. **Holmer**. Well, I guess there are several aspects of that. The first is the ITC is asked to look at a very specific issue. Have imports increased; is the industry seriously injured; and is their a causal link between the two. And when they do find serious injury, they generally recommend import relief to the President. The President, then, makes a judgment as to whether import relief is in the national economic interest. It is essential that the ITC's recommendation be reviewed by an elected official. Let me cite the biggest case we have had during this administration which was the steel case, where the ITC found injury on plate and sheet and a couple of other parts of the steel industry, but found no injury to pipe and tube. If the President had been required to implement the

ITC recommended remedy, you would have had import relief on sheet and plate and no import relief on pipe and tube. And there would have been enormous diversion into pipe and tube. So we felt that it was important for the President to have the discretion to be able to change the form of relief so that it really worked.

The second thing you need is for somebody to take a look at the overall broad national economic interest to decide whether or not relief ought to be provided. Somebody has to look at the impact on consumers, on downstream industries, on communities and on U.S. exporters. And it is our view that should not be a unelected commission. It ought to be an elected official. It ought to be somebody who can be held politically accountable for his decision. And it seems to me the only logical candidate to do that is the President.

Chairman GIBBONS. Would it be feasible or desirable maybe to take the ITC out of that loop and shorten the time? We are all attempting to shorten the time and to save money. Could we do this in say the Commerce's shop or Treasury's old shop or someplace like that? What worries me in all of this delay, delay, delay where you have a bleeding patient on the table. It is kind of like of going to an emergency and they keep asking you for your Social Security number and hell, you are already out of your head and you don't know what the Social Security number is and you just lay there and bleed until you get the Social Security number. I am worried about American industry being on the ropes and find themselves in the International Trade Commission that takes a certain amount of time to go through the procedure there. Then they come out of that sew up operation and they have to go back and say, "Well, I've got to prove this thing all over again." Maybe putting ITC in there overly complicates the thing. Does it make any sense to you to take ITC out of that loop?

Mr. HOLMER. I think probably not, Mr. Chairman. I think the present process works about as expeditiously as you could expect it to. A case comes in. The ITC has to make a difficult judgment on the serious injury question, which they normally make after they have sent out questionnaires and after hearing process that normally takes about a 4 to 4½ months.

One of the reasons, and it came out of a discussion that we had earlier, one of reasons it seems to me why not as many cases are filed now as before is because of what this committee did in the dumping and countervailing laws of 1979. One of the reasons why the number of cases in the dumping and countervailing duty area have gone up so much—658 in the last 6 years—is because you have a clear nondiscretionary unfair trade statute that provides meaningful results relative quickly. As a result, some of the industries that may have relied on section 201 before, now go to the dumping and countervailing law and do not feel as if they have to go to section 201 when they have an unfair trade practice that they can prove.

So my overall view with respect to section 201, while we do think we need to address the recessionary relief problem and we would like to expand some of the things that the President can recommend and we would like to look at the question of overall competitiveness of the industry, we do not think that beyond that there are fundamental changes that need to be made.

Chairman GIBBONS. Don't you think that tests of overall competitiveness of the industry is going to be the ultimate discouragement because if have not done well and you are not doing well, it looks pretty dark down at that end of the tunnel anyway? And it would seem like to me it would be a rather subjective judgment anyway as to whether it can ever be competitive or not. What do you think about that? Obviously you disagree, but I would like to hear your rationale.

Mr. HOLMER. Well, it is a difficult decision for anybody to make. The way it works now, though, is the administration addresses that issue in every case that comes to the President and we do it behind closed doors and essentially in a black box where people are not able to really get their hands on the process. We think it would be useful if the ITC were forced, in a relatively open proceeding, to address that issue openly and for people to be able to comment on that issue.

Chairman GIBBONS. You are saying you would try that issue anyway in administration after the ITC's recommendation during that 60-day period?

Mr. HOLMER. Yes, we do.

Chairman GIBBONS. Suppose we turn that function over to the ITC. Would you all drop it in the administration? I am trying to figure out some way you do not have to do things twice.

Mr. HOLMER. Right. There would obviously be some reluctance, I think, on the part of the President to turn that over exclusively to the ITC and to preclude him from having a cut at that issue as well. Again, we like to hold an elected official accountable for what comes out at the end of the 201 process.

Chairman GIBBONS. I don't object to that. But we have a lot of judges that have never been elected and do not know anything about elections. They are about as ignorant about elections as newspaper editors are. That ought to get some response.

Anyway, well, there is none of them around today.

Anyway, a lot of nonelected people make a lot of important decisions in our Government. Being elected excludes all of the judiciary. I have come to the conclusion, I might as well admit it here, that perhaps I have been wrong in 201. Maybe if we had a more workable 201 section that some of the other bad practices that we follow like these orderly marketing agreements that never seem to end, can be avoided. And since there is a limitation time on 201, and since they are required to be temporary under statute, perhaps they would be more temporary than some of these endless processes like the textile agreement and the steel agreement and the automobile agreement and the violations of GATT that we have over in the agriculture side that go on. How many years have we been operating as an exception to GATT in agriculture? I guess ever since we have had GATT. Had it not? We have had an exception for agricultural subsidies. That is a pretty long time.

Maybe if there had been a more workable 201 procedure, we could have avoided some of that. What is your view?

Mr. HOLMER. Well, the MFA, I think, may have started out of a textiles case or a series of cases filed in the late 1950s or 1960s.

Chairman GIBBONS. It would still be temporary.

Mr. HOLMER. Right. The steel case, again, was one that resulted from the fact that you had the steel industry coming to the administration outraged at the kind of recommended relief that came out of the ITC. The President and the administration concluded that if they were going to provide some kind of meaningful relief, it really needed to be somehow outside of section 201. I have been wanting to go back and take a look and see if there is any way that you might be able to improve the kinds of things that the ITC would look at to try to make sure that you have relief recommended that makes more sense.

One of the things that happened—and there is a representative of Bethlehem Steel here who will recall this—you had a situation in 1984 where the demand for steel sheet was going through the ceiling and the demand for plate was down very low. But this was 1984. The ITC looked at a representative period of 1979 to 1981. And the end result of all that was that they provided very draconian relief for the sheet industry and no relief at all for the plate industry which is the one that needed the most relief. So the President was placed in the box of saying "Well, I'm going to do it under 201, but do something that the industry is going to find totally unacceptable, or do it outside of 201." If there was a way to get over that hurdle, that might be useful.

Chairman GIBBONS. That makes some sense. I wish you would look at it.

In 201, is 5 years long enough?

Mr. HOLMER. Well, in some instances, it may not be and therefore I think it is useful to have an additional 3-year period where you can have an extension to a total of 8 years.

Chairman GIBBONS. We have that now.

Mr. HOLMER. Right. I am unenthusiastic about those proposals that have been made in the Senate that would expand the time period to 13 years.

Chairman GIBBONS. Well, that means never. Once you got hook that long on something, you would never get off of it.

Mr. HOLMER. That is our conclusion.

Chairman GIBBONS. Does the statute require that there must be progressive relief during that time? Does it not?

Mr. HOLMER. The statute does require that relief be degressive.

Chairman GIBBONS. Degressive.

Since we here as friends just talking things over, I wish you would look at the 201 thing again and look at it very closely because it may be that I have made a mistake and I have never been a great friend of 201. But I think I would have rather had now an affirmative automobile decision back in the original 201 than this thing we have right now that keeps going on and going on. The Japanese pretend they are punishing themselves for charging higher prices and they get some benefit out of pretending that those quotas are really hurting them. And they really do not do the job. There is no pressure really on our industry to do the job because those quotas are not really affecting them too much either. So I would like to take a closer look at that.

Well, I look forward to working with you gentlemen.

Mr. HOLMER. Thank you, Mr. Chairman.

Mr. KAPLAN. Thank you.

Chairman GIBBONS. Alright. We get on to my oldest friend out of the steel people. They have been around a long time.

Let's start off with Mr. Richard P. Simmons.

STATEMENT OF RICHARD P. SIMMONS, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, ALLEGHENY LUDLUM CORP., ON BEHALF OF THE SPECIALTY STEEL INDUSTRY OF THE UNITED STATES, ACCOMPANIED BY LAUREN HOWARD, COUNSEL

Mr. SIMMONS. Thank you, Mr. Chairman. I will not read my statement. I will attempt to summarize and in view of the comments made by the prior witnesses from the administration and in view of the fact that I am here in support of only a single issue. That issue is a private right of action. I would like to expand on some of the comments that have been made.

Chairman GIBBONS. You just go right ahead. Go right ahead. I would be interested in that.

Mr. SIMMONS. First of all, I am chairman and chief executive officer of Allegheny Ludlum Corp. and chairman of the advisory committee of the Specialty Steel Industry. With me is Lauren Howard of the law firm of Collier, Shannon, Rill & Scott. I appreciate your forbearance. It has been long day for you as it has for a number of us.

Chairman GIBBONS. Well, I am paralyzed in one end. I think the other end is still working.

Mr. SIMMONS. I should in addressing the issue of private right of action summarize for you the fact that for the past 15 years as the President of my company and as chairman of the industry committee for nearly half of that time, I have been an active participant in dumping cases in 1971 and 1972 against France and Sweden for which affirmative actions were granted; 201 cases in 1975 and again in 1977, again in 1980; a 301 case in 1981; a 201 case in 1983; and four more dumping or countervailing duty suits in the period of 1980 to 1983.

In almost every case, there was an affirmative action found in favor of the industry. The same industry—the specialty industry—was found by the administration of the prior two witnesses to be modern, technologically advanced, and export oriented.

The inescapable conclusion that I have reached after having been so deeply involved for 15 years, is the fact that the trade laws as designed do not work to redress the injury that is caused to American companies. I frankly agree with the prior witnesses when they said that this administration is administering the law. I do not believe that is the issue before this committee. At least I hope it is not. It seems to me that the real issue is whether or not the law deals with the problems that American businesses are facing.

While there are many areas in the 201 area, the 301 area, and a number of others that warrant improvement and you have touched on many of them in your questions today, our industry would like to focus on only one suggestion and one suggestion only that would enhance the efficacy of the dumping statute. And we urge the Trade Subcommittee to approve legislation which would provide an effective private right of action to enforce the dumping laws.

I should point out that we are not recommending the language in H.R. 3. We believe that we have recrafted it to be more consistent with GATT in our opinion and we do not understand the relevancy of one of the prior witness, comments concerning the unilateral imposition of 100-percent countervailing duty by the nation of Mexico. That is not what is intended by the provision that we are proposing.

We certainly want to express our support to Congressman Guarini because of his support on this important issue.

Under the existing dumping statutes, the only remedy available is the prospective assessment of special dumping duties. And these duties are remitted, as you know, to the Treasury. Thus, no matter how seriously foreign producers have injured domestic companies through their use of this unfair trade practice, American producers are never compensated for their losses. But even more importantly, the penalties that are imposed as I have said, are entirely prospective and thus foreign suppliers are not deterred from dumping. And if indeed the laws are intended to deter, not to punish, then there must be a threat of punishment if the law is to function as a deterrent.

They know—these foreign suppliers—that they need only change their commercial practices after the issuance of an administrative order. American firms, for this reason, are in what amounts to a no win situation. And for these reasons, the specialty steel industry strongly supports this concept of a private right of action to enforce the dumping law.

Such a remedy would permit U.S. companies to be made whole after suffering injury from dumped imports. But most importantly, the availability of a private right of action is intended to deter dumping to deal with the administrative problems that some of the Government witnesses have described to you just now.

It is this lack of deterrence that is the fundamental flaw in our trade laws.

Chairman GIBBONS. I agree with you. I think that is right.

Mr. SIMMONS. If we could choose as the question was posed by one of the members of your panel this morning to one of other witnesses, a single change that would make a positive and a constructive and a substantive effect on the ability of competitive, efficient U.S. companies to compete, it would be to give us the private right of action.

The concept is not new. In fact, the authority has been a part of U.S. law since 1916. Unfortunately the provisions of that act are both unenforced and unenforceable. There has never been a successful claim under its provisions. And the proof required by the act has discouraged attempts to use it. Under the terms of that statute, you must prove specific intent to injure or monopolize a U.S. industry. And in view of the problems with this act the specialty steel industry as well the Trade Reform Action Coalition (TRAC) proposes certain minimal changes to that statute which we believe would make it a viable statutory remedy. It is important to emphasize that these modifications would not alter the basic burden of proof that has existed under act since 1916.

Under our proposal, domestic industries could only obtain compensation by proving that foreign merchandise is commonly and systematically sold in the U.S. market at prices substantially less than the actual market value or wholesale price of such goods in the foreign market. The principal amendment proposed by the Specialty Steel Industry is to declare the "intent to injure" standard satisfied upon proof that the defendant knew or had reason to know that the article was being sold in the United States at substantially less than the price in his home market.

In addition once again, in order to deal with the administration's objections and some of the comments by the prior witnesses, the proposal eliminates criminal penalties and reduces treble damages to single damages. By adopting this approach the intent requirement would be transformed into a knowledge criteria, a burden of proof is more appropriate for a civil action addressing a commercial wrong.

It is important to emphasize that domestic industries that avail themselves of this remedy, would face more stringent standards than currently applied by the Commerce Department in a normal dumping proceeding.

The 1916 act imposes an egregiousness test by requiring that plaintiffs demonstrate that foreign merchandise was commonly and systematically sold at prices substantially less than the prices in the home market. These requirements of a pattern of dumping and substantial price discrimination should along with the cost of litigation deter frivolous suits.

In conclusion, we believe that U.S. companies need a viable private right of action consistent in our opinion with GATT in order to enforce the dumping laws. As a 20-year veteran of this battle in trade, I believe I understand the real world of international competition and the fact that we must indeed be competitive in this global economy.

But where distortions resulting from dumping mean that a U.S. company loses out, even though it may be the most efficient and most competitive producer, then we believe that the laws should be changed to address this issue.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Before the
Trade Subcommittee
House Ways and Means Committee

STATEMENT OF

RICHARD P. SIMMONS

SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

Mr. Chairman and Members of the Subcommittee:

I am Richard P. Simmons, Chairman and Chief Executive Officer of Allegheny Ludlum Corporation and chairman of the Advisory Committee of the Specialty Steel Industry of the United States. I am accompanied by Lauren R. Howard of the law firm Collier, Shannon, Rill & Scott.

The Specialty Steel Industry of the United States believes that the U.S. trade laws do not operate effectively or deter violations and thus we support efforts to strengthen their provisions. While there are many areas which warrant improvement, our industry would like to take this opportunity to focus on one suggestion which would enhance the efficacy of the dumping statute. We urge the Trade Subcommittee to approve legislation which would provide an effective private right of action to enforce the dumping laws of the United States.

Before discussing the merits of a viable damages remedy, I would like to describe the industry which I represent here today. The Specialty Steel Industry of the United States is a trade association representing 14 U.S. producers of specialty steels, including stainless steels, tool and die steels, superalloys and electrical steels. (See Attachment 1.) Specialty steels are used for applications demanding exceptional hardness, toughness, strength, resistance to corrosion, heat or abrasion, or combinations of these characteristics. Essential to our national defense, they are also required to maintain the civilian economy and a strong industrial base.

The domestic specialty steel industry has been found by the U.S. government to be modern, efficient, and technologically superior. Because of our competitiveness, American producers are not only able to service the U.S. market but also to seek vigorously export opportunities.

Unfortunately, despite the industry's investment in new facilities and advanced technology, American specialty steel companies have suffered severe injury from imports. Indeed, the U.S. government has acknowledged the industry's plight by granting import relief after two separate escape clause cases, first in 1976 and again in 1983. However, the fact that the industry received relief under section 201 of the Trade Act of 1974 does not mean that such imports were fairly traded.

The industry has filed numerous dumping and countervailing duty cases during the past 15 years. As a result of these efforts, foreign producers in the United Kingdom, Brazil and Spain were found to have received unlawful subsidies. In addition, the industry obtained dumping orders against stainless steel wire rod from France, stainless steel plate from Sweden, stainless steel sheet and strip from France, stainless steel sheet and strip from West Germany, and tool steel from West Germany.

We have filed section 301 cases. We have also participated in administrative reviews of these outstanding dumping orders under section 751(a) of the Tariff Act of 1930 and have obtained favorable decisions from the U.S. Court of International Trade. Perhaps more than any other U.S. industry, we have used our trade laws to fight unfair foreign competition.

While we have been successful in these actions, we have only been able to obtain prospective relief. Under the dumping statute administered by the Department of Commerce, the only remedy available is the prospective assessment of special dumping duties. These duties are remitted to the U.S. Treasury. Thus, no matter how seriously foreign producers have injured domestic companies through their use of this unfair trade practice, American producers are never compensated for their losses. Moreover, aware that the penalty is entirely prospective, foreign suppliers are not deterred from dumping; they know that they need only change their commercial practices after the issuance of an administrative order. For these reasons, the Specialty Steel Industry of the United States strongly supports the concept of a private right of action to enforce the dumping laws. Such a remedy would permit U.S. companies to be "made whole" after suffering injury from dumped imports. But even more importantly, the availability of a private right of action will deter dumping.

The concept of a private right of action to enforce the dumping laws is not new. In fact, the authority for such a remedy has been a part of U.S. law since 1916. Unfortunately, this provision of the Antidumping Act of 1916 is both unenforced and unenforceable. Despite several attempts to utilize this law, there has never been a successful claim under its provisions. Moreover, the high burden of proof required by the 1916 Act has discouraged attempts to use it. Under the terms of that statute, a plaintiff must prove specific intent to injure or monopolize a U.S. industry. In addition, the onerous penalties -- imprisonment and treble damages -- have also undermined its availability as a remedy.

In view of these problems with the 1916 Act, the Specialty Steel Industry of the United States as well as the Trade Reform Action Coalition ("TRAC") proposes certain minimal changes to that statute which we believe would make it a viable statutory remedy. (See Attachment 2.) However, it is important to emphasize that these legislative modifications would not alter the basic burden of proof that has existed under that Act since 1916. Under our proposal, domestic industries could only obtain compensation by proving that foreign merchandise is "commonly and systematically" sold in the U.S. market at prices "substantially less" than the actual market value or wholesale price of such goods in the foreign market.

The principal amendment proposed by the specialty steel industry is to declare the "intent to injure" standard satisfied upon proof that the defendant knew or had reason to know that the article was being sold in the United States at a price substantially less than the price in the home market. In addition, our proposal completely eliminates the criminal penalties and reduces the treble damages penalty to single damages. Thus, domestic companies would be entitled to compensation for their actual economic loss, rather than gaining the windfall of three-fold damages.

By adopting this approach, the "specific intent" requirement would be transformed into a "knowledge" criteria, a burden of proof which is more appropriate for a civil action addressing a commercial wrong. However, it is important to emphasize that domestic industries that avail themselves of this remedy would face more stringent standards than currently applied by the Commerce Department in a normal dumping proceeding. The 1916 Act imposes an "egregiousness" test by requiring that plaintiffs demonstrate that foreign merchandise was "commonly and systematically" sold in the U.S. market at prices "substantially less" than the prices in the home market. These requirements of a pattern of dumping and substantial price discrimination should, along with the cost of litigation, deter frivolous suits. Moreover, importers who wish to avoid financial liability could add an indemnification provision (including defense of litigation) in the contracts with their sellers. Our proposal is also fully consistent with the requirements of the General Agreement on Tariffs and Trade ("GATT").

In conclusion, the Specialty Steel Industry of the United States believes that U.S. companies need a viable private right of action to enforce the dumping laws. As a 20-year veteran of the trade wars, I understand the real world of international competition, where distortions resulting from dumping mean that a U.S. company loses out even though it may be the most efficient and competitive producer. And I know we will never win the trade wars without a real deterrent to pervasive dumping. What we have proposed today is a solution that will work. Thank you.

ATTACHMENT 1

SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

Allegheny Ludlum Steel Corporation
Pittsburgh, Pennsylvania

Al Tech Specialty Steel Corporation
Dunkirk, New York

Armco Specialty Steels Division
Butler, Pennsylvania

Carpenter Technology Corporation
Reading, Pennsylvania

Columbia Tool Steel Company
Chicago Heights, Illinois

Crucible Specialty Metals Division,
  Crucible Materials Corporation
Syracuse, New York

Cytemp Specialty Steel Division,
  Cyclops Corporation
Titusville, Pennsylvania

Coshocton Stainless Division,
  Cyclops Corporation
Coshocton, Ohio

Jessop Steel Company
Washington, Pennsylvania

Latrobe Steel Company
Latrobe, Pennsylvania

J&L Specialty Products Company
Pittsburgh, Pennsylvania

Slater Steels Corporation
  Fort Wayne Specialty Alloy Division
Fort Wayne, Indiana

Teledyne Vasco
Latrobe, Pennsylvania

Washington Steel Corporation
Washington, Pennsylvania

ATTACHMENT 2

2/21/87

PRIVATE RIGHT OF ACTION

Section 801 of the Revenue Act of 1916 (15 U.S.C. 72) is amended --

(a) by adding the following new paragraph after the first paragraph:

"In any action filed pursuant to this section, (a) the phrase "assisting in importing" shall include, but not be limited to, persons who produce, manufacture or export the article if such persons knew or had reason to know that the article was being imported or sold within the United States, and (b) the importation or assistance in importation of an article shall be deemed to have been done with the intent of injuring an industry in the United States if the person importing or assisting in such importation knew or had reason to know that the article was being imported or sold within the United States at a price substantially less than the actual market value or wholesale price of such articles as defined in the first paragraph of this section."

(b) by deleting the second paragraph (now third paragraph) beginning with the words "Any person who violates . . . . "

(c) by deleting the word "threefold" between the words "recover" and "the" in the third paragraph (now fourth paragraph) of that section.

Chairman GIBBONS. We will hear from the rest of the panel, but I think I missed or you missed—one of the criticisms that I hear and that is that the Guarini proposal could be enforced against an American purchaser in an unfair manner.

Now, I do not know whether your new statute covers that or not or whether that is a valid criticism of the Guarini proposal, but I hear that over and over again.

Mr. SIMMONS. The statute which we have introduced would permit us to apply for redress against the exporter.

Chairman GIBBONS. Against the exporter, not against the importer?

Mr. SIMMONS. Well, indirectly, but only indirectly.

Ms. HOWARD. The 1916 act currently allows suit against anyone who imports and assists in importing, but we feel that the problem of the "innocent importer" can be addressed by the standards that are in the existing law as well as in our proposals.

Our proposal only would allow liability if that importer knew or had reason to know that he was engaged in substantial dumping transactions. We feel this egregiousness test translated——

Chairman GIBBONS. That sounds reasonable. That sounds reasonable.

Ms. HOWARD. Also it would not——

Chairman GIBBONS. I have been on both sides of the lawsuit and that sounds reasonable.

Ms. HOWARD. It would not attack the sporadic dumped transaction, it would not attack the minimal dumped transaction. The importer would have to be engaged in a pattern of dumping, the price discriminations would have to be substantial, and he would have to have knowledge or reason to know that he was engaged in substantial and continuous dumping transactions.

Also, if the importer wanted to protect himself, he could always by contract negotiate with his supplier, either the exporter or the foreign producer, for an indemnification provision which would basically say: "If I get sued by purchasing goods from you, then you have to pay not only any liability I might be incurring but also my attorney's fees." And that can be a matter of standard contractual negotiation in advance of any litigation.

Chairman GIBBONS. I like the private remedy because I believe that one of the fundamental flaws in our unfair trade laws is that there is no penalty. It is just—you say, well, I am sorry, gee, I will change, you know, and then you are forgiven. Who is going to obey the law when you have that kind of—that is childish. It is childish. The law serves no real useful purpose when you can get out of it that easily.

In fact, as I see it, it encourages people to take a chance and to dump in a market or to subsidize into a market or to violate the law because there is no—what the hell, it is good smart business to do it if you can get away with it. You have not lost anything and you have gotten an advantage. I think the management of an aggressive company would be negligent if they did not cheat a little in the thing because the laws puts no penalty on cheating, and I think we have got to have that in the law.

If we could vote on that right now, I think we could.

[Laughter.]

Ms. Howard. Let's do it.

Chairman Gibbons. That is the way the previous chairman used to do it. I have great admiration for him. Chaparral Steel?

STATEMENT OF GORDON E. FORWARD, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CHAPARRAL STEEL CO., ACCOMPANIED BY CHARLES O. VERRILL, JR., COUNSEL

Mr. Forward. Mr. Chairman, good evening. My name is Gordon Forward. I am president and chief executive officer of the Chaparral Steel Co., in Midlothian, TX, and with me is Charles Verrill, of Wiley, Rein & Fielding law firm, Chaparral's counsel here in Washington.

I would like to merely present a synopsis of our position which is in the document before you.

Chaparral Steel Co. is a wholly owned subsidiary of Texas Industries and is internationally recognized as a world class basic steel manufacturer. In fact, it is described as one of the most efficient steel producers in the world and is the largest new facility to be built in the United States since the early 1970s.

Our steelmaking capacity is now 1.5 million tons and we are marketing a wide range of steel products to over 2,000 customers in 48 States and Canada, and plan to export to Europe this spring.

Mr. Chairman, we believe that the changes needed should not be protectionist. We think that quotas certainly are not an answer. On the contrary, we think that a change should be to open up trade. We welcome fair trade from all over the world and seek equal access to foreign markets. We feel that what we really need to do is enforce the existing laws, and much of the conversation we have just had we agree with. But we need to enforce the existing laws in a timely and expeditious manner. Central to this issue of enforcement is the definition of injury, and we deal with injury in the document in front of you.

Specifically, we would like to make four recommendations: No. 1, we need a decisive halt to injury, and this is our definition of injury in Midlothian, TX: All dumping and As you are looking for a way possibly of circumventing the ITC would certainly do that. An injury is rather interesting. Profitable companies like our company can be harmed by unfairly traded imports. Even a relatively small quantity of unfairly traded product, including imports from countries already subject to the President's steel program, severely impacts market prices, reducing selling prices at times to a point which can rob even a profitable company of capital needed to reinvest and to maintain a world class manufacturing facility.

The enforcement record of our existing trade laws is filled with cases where investigations by the Department of Commerce have identified foreign dumping or government subsidy, only to have justified relief blocked by the ITC determinations that no material injury is occurring to the U.S. industry.

Our confidence in obtaining appropriate relief from unfairly traded imports has eroded to the point that we are reluctant to use our existing trade legislation. The futility and lack of confidence in our current system must be corrected. We need to establish very clear and enforceable criteria for determining injury.

Our second point: We need to streamline the administration. The investigative process once a complaint has been lodged requires strict time limits for a determination. In our opinion, this time limit should not exceed 120 days. Our current system, as you know, can take one to two years for the resolution of a complaint, while a complaining industry continues to suffer damage.

Our third point is the opportunity to recover damages. An injured domestic manufacturer should have the ability to recover legal expenses and proper damages once dumping or foreign government subsidy is determined. Rather large legal expenses associated with a successful fair trade proceeding are not recoverable by the complaining company and in many smaller companies—and I also refer here to many of our customers in the forging industry—do not have the financial resources to seek appropriate relief. Provision to recover damages and by making violations subject to the added risk of being assessed a penalty along the lines that you were just discussing.

And our fourth point, and a very important point to us, is reciprocity. U.S. exporters should have the access to foreign markets on the same terms that are available to foreign producers in this market. Where foreign barriers preclude competition in the foreign market on a reciprocal basis, products of the country raising the barrier should be denied entry until there is a bilateral resolution satisfactory to the United States.

Specifically, in the case of Chaparral, we are placed at a disadvantage in shipping our structural sheets to countries such as Canada and European Economic Community, where their duties are 6.8 and 4.4 percent respectively versus a U.S. duty of only .9 percent on like products.

Mr. Chairman, those are my comments and I welcome your questions.

[The prepared statement follows:]

STATEMENT OF
DR. GORDON E. FORWARD
PRESIDENT AND CHIEF EXECUTIVE OFFICER
CHAPARRAL STEEL COMPANY
MIDLOTHIAN, TEXAS

Good morning, Mr. Chairman and Members of the Trade Subcommittee. I am Gordon E. Forward, President and Chief Executive Officer of Chaparral Steel Company of Midlothian, Texas. With me is Charles Owen Verrill, Jr., of Wiley, Rein & Fielding, Washington, D.C., Chaparral's counsel.

I have asked for this opportunity to testify because the trade legislation now before the Committee is an excellent opportunity to make changes in the Trade Laws that are vital to the continued competitiveness of domestic industries that must compete with imports. The changes needed are not protectionist. Neither are they contrary to the principles of G.A.T.T. nor to the objectives of the Uruguay Round initiated last fall at Punta del Este. On the contrary, the changes that can, and should, be made are consistent with the proper role of the trade laws which, in my opinion, is to ensure that the competition from imports is fair.

Chaparral welcomes fair competition. We have it here in the United States. Most import competition, however, is another matter. It is often characterized by hit-and-run dumpers that often operate from impenetrable home markets, by state enterprises that disdain commercial considerations in their sales to the United States, and by subsidization of industries that cannot survive without government assistance and that often make investments in production facilities that could not be justified by the marketplace. While there are numerous proposals to deal with these problems, Chaparral believes that action must be taken now to deal with the definition of injury under the trade laws and to expand the opportunities for efficient, competitive U.S. companies, not only to defend against unfair competition from abroad, but also to compete in foreign markets. The administration of the trade laws should be streamlined to ensure relief in a timely fashion. Finally, Chaparral supports the proposals to make available a meaningful right to recover damages resulting from dumping.

Chaparral has reached these conclusions from our experience in building a new, and highly efficient, steel mill in Texas. Since start-up in 1975, when we had a capacity of 300,000 tons, Chaparral has expanded into a 1.5 million-ton-per-year market mill with a diverse line of "long" products: bars, structurals, rebar and beams. Chaparral markets in forty-eight states and Canada and we are now actively seeking sales in Europe.

At present, each Chaparral employee produces over 1,200 tons of steel per year as contrasted to 600 in Japan and considerably less in most other countries. This achievement, possible only because of our commitment to innovation, means that our labor cost per ton, including management time, is only 1.6 man hours and declining. In other words, our labor cost per ton is less than the expense of the ocean voyage from most foreign destinations. This cost comparison cannot be overemphasized, particularly since so many of the nations that export steel to the United States use substantial quantities of scrap purchased from the United States, which adds another ocean voyage to the costs of the foreign producer.

With these advantages, we ought not to have to worry about import pricing that jeopardizes our ability to continue to make the investments that are necessary to maintain our world-class status. But, that has, unfortunately, not been the case. While we have earned profits, we were forced, several years ago, to curtail our new investment set-aside from earnings.

One can, and should, ask why is this so? It is clear to me that offshore producers are not more efficient and, with few exceptions, are far less productive. In fact, we compete with many state-owned mills like Salzgitter in Germany and Cockerill-Sambre of Belgium, both of which receive huge subsidies, but continue to experience heavy losses. Part of the problem, of course, is that these and numerous other mills are reluctant to give up market share in the United States and, so, sell at any price necessary to move the tonnage they feel entitled to ship. This almost inevitable result of Arrangements has been appropriately labeled "quota filling." Of course, given the immunity from antidumping and countervailing duty laws conferred by the current Arrangements, foreign producers are more than willing to take losses to ensure continued market share.

The Arrangements also encourage price predation because many countries have not accepted restraint. Producers in these countries are avidly sought out by brokers here in the United States to replace tonnage curtailed under the Arrangements. In rebar, we have seen this phenomena with disturbing acuity as non-Arrangement producers have increased shipments to take advantage of the curtailment of imports from Arrangement countries. As a result, the same, or greater, total tonnage is being imported only with different country of origin tags. Of course, the price has gone down as brokers seek to sell metal from unfamiliar sources to price-conscious consumers. At the same time, Arrangement country producers (or their brokers) also lower prices to prevent loss of market share to the newcomers.

Chaparral believes that dumping and subsidization is by definition unfair and should be labeled injurious. While such a per se rule may not be a practical objective, it does serve to highlight a disturbing trend in the analysis of the injury requirement by the International Trade Commission ("ITC"). This trend is toward a much different concept of injury than adopted by Congress in the 1979 Trade Act. For example, I have read in recent ITC decisions the viewpoint that imports cannot unfairly influence domestic market prices in the absence of "market power." This notion derives from the conclusion that "unfair price descrimination" is not "rational" unless

> a firm may try to capture a sufficient market share to be able to raise its price in the future. To move from a position where the firm has no market power to a position where the firm has such power, one firm may lower its price below that which is necessary to meet competition. It is this condition which Congress must have meant when it charged [the ITC] to "discourage and prevent foreign suppliers from using unfair price descrimination practices to the detriment of a United States industry."[1]

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[1] Top-of-the-Stove Stainless Steel Cookware from Korea and Taiwan, U.S.I.T.C. Pub. No. 1936, January 1987 (views of Chairman Liebeler).

If this is the law, which I doubt, it shouldn't be, and the pending trade bill is the place to clarify the intention of Congress.

As I have testified, we are injured by unfair import pricing for the simple reason that Chaparral has lost revenues either because of lower selling prices or because of lost sales where we chose not to match the import offer. In this context, is it relevant to the administration of our trade laws that the foreign firm is seeking market power? Of course not. And, I would like to emphasize, the way the market works -- the day-to-day circumstances in which our salesmen sell steel -- has little to do with "rational" or "irrational" competitors. A few examples demonstrate the diffference between actual and theoretical competition:

First, at least in the steel trade, the offering price of the import is what dictates market price. Suppose a broker has imported 100 tons of rebar that is sitting on the dock in Houston. That steel will be offered to customers until a buyer is found. If it takes ten calls to make the sale, it would appear that there are 1,000 tons available and each customer offered the tonnage will use the offering price as the benchmark in dealing with U.S. suppliers. If the offering price is dumped or subsidized, does it make any difference whether the foreign supplier wants "market power"?

Second, steel buyers have good market information precisely because they talk so often to brokers and salesmen. However, they do not know -- and cannot know due to the antitrust laws -- exactly what prices competitors are paying in actual transactions. As a result, offering prices, even for steel that is still on board vessels, is the determinant of transaction prices which are reflected in mill nets.

Third, firms can and do "dump" or sell subsidized surplus production in the U.S. market when home demand is in decline. Subsidies often keep mills in operation long after they should have been shut down. Prices for imports under these circumstances become particularly damaging when the home market of the foreign producer is protected from competitive pricing.

These examples demonstrate that dumped or subsidized imports can, and do, have harmful effects on domestic producers that are often out of all proportion to the actual tonnage involved. Moreover, as our company's experience suggests, even highly efficient firms can lose the ability to maintain the investment pace necessary to preserve competitiveness, even with nominal profits. I want to emphasize that, in a sense, highly efficient firms are more vulnerable to long-term harm than would appear to be the case. These firms can lose competiveness, even in a brief period, while still maintaining profitability. That can be the result, for example, where funds are not available for continued new investment in innovative technology as contrasted with merely replacing existing technology through depreciation. Recognition of this distinction is critical to preservation of competitive American industry.

To avoid this impact on competitive firms, Congress defined injury in the 1979 Trade Agreements Act as harm that is more than inconsequential and provided for an affirmative determination if imports are a cause of that harm. While we would prefer that the injury test be eliminated, if it is retained, then Congress should at least restore the 1979 minimal test to correct a drift away from those principles. If prices decline, or if sales are lost, due to dumped or subsidized imports, the injury test should be met so long as there is "harm" to the domestic industry.

We also urge this Committee to add consideration of the conditions of competition in the exporting country to price and volume effects in the injury evaluation. What the trade laws currently fail to recognize is that the home markets of producers that receive subidies or dump in the United States are usually "separable" in the sense that U.S. firms have little meaningful access to the exporter's market. This lack of access can come from a variety of barriers, including high tariffs, import restraints, licensing schemes, unreasonable inspection requirements, and so on. Chaparral -- which is striving to develop an export business -- has run into all of these barriers which are frustrating, since the market price in many countries today is very attractive to us.

It is, in fact, particularly disturbing that these barriers also magnify the effect of dumping or subsidized prices in the U.S. market. This is because the foreign producer selling from a protected market is likely to rely on higher prices in the home market to sustain lower prices in the U.S. market where surplus production can be dumped. Production that would not have occurred but for subsidies can also be sold at lower prices in the U.S. market where the home market price is securely set at a safe level. In other words, the protections at home make the exporter more capable of sustaining lower prices abroad. This phenomena is well recognized by economists. For example, the ITC's Office of Economics recently concluded that, when barriers are eliminated so that national markets are no longer separable, then a dumping firm would likely raise the price of exports to the United States and lower the price charged in its home market until the two were equalized.[2] This, of course, proves my point that barriers to access result in lower prices in the U.S. market than would exist with free entry.

The absence of meaningful market access also prevents U.S. firms from taking corrective steps by selling in the foreign producer's market. Our only defense is to sell competively in the U.S. market, which means lowering our prices to avoid losing sales to the dumped or subsidized imports. This demonstrates why import pricing is so much more damaging than competition from other producers in the United States. The domestic steel companies that compete with Chaparral do not operate from secure locations where high prices can sustain lower prices elsewhere in the country. Prices, therefore, are responsive to competition between profit-maximizing firms. Where those prices are forced down by dumped or subsidized imports, particularly from countries that do not have market access, then there is clearly injury that ought to be remedied under the countervailing duty and antidumping laws.

Countervailable subsidies also distort a trading system based on comparative advantage. Subsidies encourage irrational investment and production, for which it is often necessary to restrict access to the exporter's home market. These restrictions can occur overtly, or they can be the natural consequences of subsidies that depress the cost of production so low that non-subsidized producers would have to sell significantly below their own cost of production in order to compete in the exporter's home market.

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[2] Memorandum to Vice Chairman Brunsdale, An Economic Analysis of Dumping, prepared by the ITC Office of Economics, December 2, 1986 (the "ITC Memorandum").

Under these circumstances, exports from a subsidized market where meaningful access doesn't exist are more likely to cause or threaten material injury than subsidized exports from a freely competitive market. The dangers are identical to those faced when antidumping duties are involved. Prices in the United States are likely to be suppressed due to a lack of market integration. Self-corrective competitive forces won't work against injurious and irrational production. The foreign manufacturers know and exploit these opportunities.

In our view, the solution is to include lack of access to the exporter's home market among the factors to be considered in injury analysis. Where there is no meaningful access, then evidence of price undercutting, suppression, or depression, or sales lost to imports at dumped or subsidized prices should be conclusive that imports were a cause of harm to the domestic industry. We are aware that price comparisons are not always as easy to make as it would appear. However, we are persuaded that every sophisticated company is keenly aware of actual price movements and can provide both testimony and documents to demonstrate when price undercutting, or suppression, has occurred.

The standard of "lack of meaningful market access" should be adopted because it is best suited to meet the goals of the unfair trade statutes. For purposes of this proposal, "market access" would mean that there is a freely competitive market for the like product in the exporter's home market. In judging whether free competition exists, the Commission should make its judgment based upon facts in the individual case. Obviously, import licensing schemes and high tariffs limit competition based on comparative advantage and deny meaningful access. Less formal or overtly protectitionist means also accomplish the same goals. Thus, state trading enterprises, sanctioned monopolies, and any other inexplicable market pattern that is not based upon comparative advantage indicates that meaningful market access does not exist.

The meaningful market access requirement does not mean that U.S. companies must currently be competing in a market. Rather, the Commission's goal should be to establish that comparative advantage is the basis of competition in the exporter's market. For example, if steel products from Country A have a lower cost of production than the like product in Country B, it would be reasonable to expect those products to be sold in Country B's home market in substantial quantities. If Country A's steel was not sold in Country B in reasonable quantities, then this should be a basis for a conslusion that the forces of comparative advantage are not at work in the Country B's home market; this would warrant the ITC to conclude that meaningful market access does not exist.

In using this new standard, the Commission should only be concerned about the lack of meaningful market access. Thus, where meaningful access to the exporter's home market exists, this should be a neutral factor. In other words, the law should be administered so that the lack of meaningful access to the exporter's home market will be penalized, but no additional benefits will be received compared to present standards where market access does exist.

Our other recommendations are consistent with this proposal. We need new laws to enlarge the opportunities to sell abroad. The amendments proposed to Section 301 by Subtitle A of H.R. 3 are a good step in this direction although we would prefer less discretionary authority. In addition, Chaparral supports a meaningful private right of action to recover damages resulting from unfairly traded imports.

This concludes my statement. We would be pleased to work with your staff in developing legislative language to implement these proposals.

Thank you.

February 27, 1987

Chairman GIBBONS. Thank you very much. Mr. Coffey?

STATEMENT OF MATTHEW B. COFFEY, PRESIDENT, NATIONAL TOOLING AND MACHINING ASSOCIATION, AND MEMBER, EXECUTIVE COMMITTEE, METALWORKING TRADE COALITION, ACCOMPANIED BY ILONA HOGAN, COUNSEL

Mr. COFFEY. Mr. Chairman, my name is Matt Coffey and I am substituting for Mr. Corner who could not be here, on behalf of the Metalworking Trade Coalition.

You have our prepared statement and, since much of that statement has already been spoken about with the previous two witnesses, I would just submit it for the record and emphasize a few points in it that have not been covered.

As a member of the Metalworking Trade Coalition, we are also a member of the Trade Reform Action Coalition, and I have their proposed bill which I know has been delivered to all the members of the subcommittee which I would at this time request be submitted for the record.

Chairman GIBBONS. How thick is it?

Mr. COFFEY. Well, it is probably 10 pages.

Chairman GIBBONS. That is all right, we will take that.

Mr. COFFEY. Fine.

The Metalworking Trade Coalition is a coalition of associations that represent small metalworking companies. We have in the coalition 35 national associations. They represent 29,000 small manufacturers in a variety of segments of the metalworking industry. They are located in 40 States.

It is interesting to me today to have been here and to hear the stories of the various witnesses about the number of cases they have filed, the number of successes they have had, because as far as small businesses are concerned the trade laws were not designed for them at all.

The cost of entry is too high; it is not unreasonable to expect that if you are going to spend in filing an ITC case maybe $500,000 in just preparation, proving injury, proving the fact that there is substantial dumping. And we are talking about most companies whose size is 40 or less employees, whose net worth probably does not equal what it would cost them to file a case at the ITC. So effectively they are excluded from participation unless they participate through some group in filing actions.

They are frustrated in that because the data collected by the Commerce Department is not differentiated enough to allow us to even know the extent of damage that is occurring. In other words, we are an industry that is in a series of niches, those niches are so small that they miss the screen that the Commerce Department uses to measure, and as a result they get lumped into very large numbers that do not even provide useful data to document a case. So the data problem that we have in building a case is substantial as well.

You know, we are not talking about distressed companies. I am talking about small companies that have been effective competitors over a long period of time. Personally, I serve as president of the National Tooling and Machining Association representing tool, die, precision machining, mold, and special machine builders in the United States. As an industry we are successful because by the very nature of the industry we are forced to compete.

If we are not absolutely right on quality, if we are not right on delivery, if we are not right on all the factors that go into a buying decision, then we are not in business very long, because one or two contracts can make a difference between success and failure.

We have seen over the last several years tremendous changes and tremendous challenges going on in our industry. Our customers are changing, the technology is changing, the markets are changing, and all of our members have very aggressively attempted to keep up with that change.

Where we find ourselves at a disadvantage is in the market overseas, for several reasons. The impacts we are starting to see. One, a lot of domestic multinational companies are moving the production of their end products off shore, and in doing that they obviously source our products off-shore. On the other hand, when you have transplant companies coming here from Japan, for instance, in the automobile industry, they are not sourcing in the United States. They are still sourcing back in Japan. So we are seeing our market being moved away from us as this shift of the multinationals offshore occurs.

The second thing we have seen is——

Chairman GIBBONS. As chairman of this subcommittee, I am very concerned about that and we are exploring methods of trying to bring that under control. These talks that are going on today are very important. And while I usually hate to intervene with a personal intervention in negotiations, I have let the bargainers know that we are very concerned about the outcome of that negotiation. We do not want any stonewalling or any fudging around. There are going to be some positive results or we are going to have to do something in the legislative field.

Mr. COFFEY. Well, when people talk about reciprocity, you know, we ought to put some requirements on people establishing facilities in the United States in terms of domestic sourcing if we are going to try to achieve any kind of balance.

I think the other thing we are seeing is the development of very highly skilled competitors overseas, and most of that has occurred as a direct result of U.S. foreign aid and military aid. This has created in these countries sophisticated machining-type or metalworking type industries that are now coming up the experience curve to the point where international competition in our industry is increasing at a geometric rate, not an arithmetic rate any longer. So we see the need to compete very effectively in a world economy on a continuing basis.

The third factor that we see as a problem, of course, is the fact—which has been mentioned here today—and that is the tremendous burden of cost that production carries in this country as opposed to our competitors, that cost being in the various social programs, in the various environmental programs and all the other desirable programs, I do not think any of our people do not want to support them but the fact that we have chosen in this country to load those on production as opposed to consumption has put us at a competitive disadvantage in terms of price. Not at a tremendous disadvantage yet but it is at an increasing disadvantage. And as mandated programs keep getting added onto the pile that presently exists, all it is going to do is force us into an increasingly difficult price-cost squeeze in terms of being able to effectively compete in the world market.

We have analyzed the bill that the committee has produced and are very supportive of virtually all the trade provisions in that bill, but we believe that in this area of unfair foreign competition there is a need for some special attention to be paid to the particular problems that small business people have. In some cases they are addressed in the bill and some are not.

We believe there should be prohibitions on diversionary dumping, making it an actionable unfair trade practice, which it is not now. We should insist on downstream product monitoring to prevent evasion of U.S. dumping and subsidy laws.

We think there needs to be the establishment of clear statutory guidelines on upstream subsidy investigations, and this really goes to the point of the European customs unions which at the present time can in fact engage in subsidies and not be nailed for doing that. We——

Chairman GIBBONS. Give me an illustration of that, if you can.

Mr. COFFEY. Well, I would like to come back to it, if I can, at the end.

Chairman GIBBONS. Fine.

Mr. COFFEY. We support the establishment of a private right of action. We think that it is ludicrous now, the situation we find. Not only can we not participate in the process because of the front-end cost of it, but we cannot get at the person who is causing the problem for our companies around the country.

We feel the need to give the Commerce Department more extensive authority not only to assist in bringing unfair trade cases but to initiate fact-finding on behalf of smaller businesses, because without that small business access to trade remedy is not going to happen.

There were some amendments in 1984 that started in this direction, but the implementation of that has not been at a level that would have really done the job for us, we think there is some need for additional work in that area and we would like to work with the committee in that area.

We think that in the ITC there has to be some sensitivity to small business factors which we do not see at the present time. The lack of available data often in many, many cases, and the size of the companies and their ability to survive, are much more critical to the small company than they are to the large company that finds itself competing against an unfair foreign competitor.

We would like to see cost sharing by the Government in filing and prosecuting cases by small business and would recommend a provision along those lines.

We would like to see a simplification of the ITC and Commerce Department preliminary injury determinations. It is a terribly onerous burden to try to get through the exhaustive investigations that are part of these determination stages.

We believe that you should have provisions initiating fast-track investigations to produce quicker and less costly relief, and we should put a time limit on section 232 cases. I think the example of the machine tool builders in the 232 case over 3 years, when you saw the domestic industry really go down very, very fast, and the delay that was created through the ITC process, the Commerce Department, then the President, and then still not really a decision in the case but a voluntary restraint agreement as the answer, just indicates that that is one area that has no time limit. It needs one because many of the industries, and many of the companies that I represent work almost exclusively in national defense areas.

These are the laundry list of recommendations that we have for you. I would at this time introduce to you Ilona Hogan, who is counsel from Hogan & Hogan, and we would be happy to respond to questions.

[The prepared statement follows:]

Statement of Matthew B. Coffey, on Behalf of the Metalworking Trade Coalition

Mr. Chairman and Members of the Committee, my name is Matthew B. Coffey. I am a member of the Executive Committee of the Metalworking Trade Coalition (MTC) on whose behalf this testimony is offered. I am also President of the National Tooling and Machining Association which, of course, is part of the Coalition.

We very much appreciate this opportunity to offer our comments on the need for comprehensive trade legislation in 1987 inasmuch as we have advocated trade law reforms since MTC's formation in 1981.

The Metalworking Trade Coalition is composed of 35 national trade associations representing 29,859 small metalworking plants in 40 states which employ 1.9 million persons and produce $96 billion in annual sales. (MTC is a member of the Trade Reform Action Coalition (TRAC) which has proposed a package of comprehensive trade law reforms which are being submitted as an exhibit with this statement.)

MTC is truly an organization of small businesses. There are 49 workers today in the average metalworking plant where products and components for virtually all industrial and consumer goods are made. Our member companies are essentially a manufacturer's manufacturer and have thus felt the downstream economic impact of the loss of domestic markets of their manufacturer customer.

For this reason, we applaud the early introduction of H.R.3 and this Committee's immediate consideration of comprehensive trade legislation. While we emphasize the need for comprehensive reform, in the interest of time we will limit our testimony to four issues of particular concern to the metalworking community.

It gives us great hope that each of these four issues is addressed in H.R.3. They include diversionary dumping, downstream product monitoring, private remedy for injury resulting from dumping and imports affecting national security. We would be remiss if we did not express our gratitude to the Committee as a whole for including these provisions in H.R. 4800 last year and to Representatives Russo and Guarini in particular for championing these amendments during committee deliberations.

Diversionary Dumping and Downstream Product Monitoring

Diversion is the evasion of U.S. dumping and subsidy laws. It occurs when products that are subsidized or sold at dumped prices are further processed or are used as components in "downstream" products. It is also used to evade restrictions in voluntary restraint arrangements, like those presently in effect on steel.

If the component production is subsidized, the practice is called "upstream subsidization." If the component is being sold at a dumped price, the practice is called "diversionary dumping."

Over the last five years, literally hundreds of antidumping and countervailing duty actions were brought against a broad variety of imports. A good share of these actions were successful and resulted in the imposition of additional duties on imports, especially in the steel sector. Since the President's steel program went into effect in late 1984, most of the principal foreign steel suppliers have agreed to restrain their exports of a broad variety of products. While those agreements superseded countervailing duty or antidumping orders previously in effect on covered products, a number of other orders remain operative. The net result is that a great deal of steel imported into this country is subject to quantitative limitations or penalty duties imposed to offset unfair trade practices.

Faced with this situation, foreign producers have every economic incentive to "move downstream." That is, they are actively seeking to avoid restraints on their products by transforming them into other products that may be beyond the coverage of existing quotas or orders.

Virtually every observer has agreed that diversion is a serious threat to our trade laws and our industries. Both houses of Congress sought to deal with the problem in 1984. Both the trade bill passed by the House last year and the substitute offered by the Republican leadership contained antidiversion measures. The Administration trade bill introduced last week as H.R. 1155 seeks to "tighten antidumping and countervailing duty laws through new anti-circumvention provisions to prevent evasion of duties."

Several examples of diversion illustrate the problem:

1. In 1982, American steel producers brought countervailing duty actions against a broad number of steel products exported by the European Community. Among those products was cold finished steel bar, which is made from hot rolled bar. The Commerce Department concluded that hot rolled bar production in most of the Community countries was subsidized; however, they refused to consider those subsidies in evaluating the downstream product, cold finished bar. As a result, a negative finding was made on cold finished bar. In late 1982, the EC entered into a voluntary restraint agreement, thereby settling all outstanding countervailing duty cases. Hot rolled bar was given a specific limitation; cold finished bar was left uncovered, save by a so-called consultation provision. The result was predictable: stymied by the limits on hot rolled bar, European steel makers diverted their production to cold finished bar. During 1981, which was the base year under the EC agreement, the Community's producers had taken a 4.88% share of the domestic cold finished bar market. By 1984, this share had grown to 6.16%. For the first twelve months of the President's program, until European shipments were brought under control by a new agreement, their market share had grown to 9.6%. In other words, the incentives for diversion had caused a doubling of cold finished steel bar exports from the EC.

2. A recent example of diversion is found in the efforts to set up a pipe production facility in Panama that would use Brazilian sheet. The clear objective of that arrangement is to avoid the express undertakings made by the Brazilian government to limit their sheet exports to the United States.

3. A related case affects the American structural steel industry, which now uses 5 million tons of steel a year and sells products worth $6 billion. It appears that countries subject to voluntary restraint arrangements are using fabricators in Taiwan and Singapore to circumvent the limits in those undertakings. As a result, imports from Taiwan and Singapore have exploded, from negligible levels in 1984 and before to tens of thousands of tons this year.

A major problem, however, is developing measurements of the impact of diversion to downstream products. American tooling and machining industries take steel mill products and produce a variety of cogs, gears, and other "widget"-type articles that are used as components of other products. In many cases U.S. tariff classifications do not include a specific breakout for downstream articles like screw machine products. Those items might enter as "parts" of automobiles or farm equipment. Nonetheless, some measurements have been made, and the conclusions are clear:

1. The first example comes from the tooling and machinery industry which I represent. These producers make the tools, dies and molds that are essential to mass production manufacturing in this country. At its height a $20 billion industry, the tooling and machining sector has witnessed erosion directly proportional

to the decline in the U.S. manufacturing base as a result of diversionary dumping of the products made from the tools, dies and molds they produce.

2. The International Trade Commission recently found that the average level of ball and roller bearings imported directly and as downstream products increased from 22% in 1978-1983 to 28% in 1984-1985. In dollar terms, increases of bearings incorporated into downstream imports went from $173 million in 1978 to $431 million in 1985.

3. The National Screw Machine Products Association, for example, has estimated that market penetration by imports increased from 7.9% in 1979 to 11.4% in 1984. There are indications that this penetration has increased even further since then.

4. The forging industry is another example of dramatic increases in downstream product imports. Based on a U.S. International Trade Commission study, imports of forgings in nine categories from 1981 through the first 8 months of 1985 have gone from 15.6% to 27.2% of the U.S. market. The numbers are even greater in three key product categories. For example, in the period 1981 through 1984, the market penetration by crankshaft imports increased from 43% to 61%, fittings and flanges from 22% to 48%, and undercarriages from 14% to 44%.

5. A recent study analyzes the impact of the downstream phenomenon and underscores its importance to MTC members. According to this study, the steel contained in imports of products such as automobiles and machinery increased by 136% between 1977 and 1985. Over the same years, the steel content of our exports declined by 17%. As a result, the U.S. went from a positive trade balance of 3.1 million tons of indirect trade in steel-containing products in 1977 to an indirect steel trade deficit of 6.3 million tons in 1985. In other words, we had an unfavorable shift of 9.4 million tons of steel during these years. While total steel usage in 1985 was about the same as in 1977 (103.3 million tons vs. 105.3 million tons), apparent domestic consumption of steel products, which is the available market for domestic producers, declined from 108.5 million tons to 97 million tons, a drop of 11%. These changes were in large part due to increases in downstream product imports, from 5.8 million tons in 1977 to 13.7 million tons in 1985. These are tons that could have been supplied by American producers.

6. A recent study by the Commerce Department estimates that indirect steel imports displaced $8.5 billion or 30% of domestic steel shipments in 1984 alone. The Metalworking Trade Coalition therefore supports current efforts to establish an accurate, ongoing Census Bureau data series to measure the U.S. trade balance annually for products containing steel. We therefore welcome the decision by the Secretary of Commerce that commits the Commerce Department to help fund the receipt of accurate indirect steel trade data.

We do not contend that all the increases in imports of metalworking products are due to diversion. Nonetheless, the evidence is clear that diversion is a serious problem and that the incentives for its expansion are growing in steel and many other industries. There is also no doubt that the net effect of this diversion is to undercut the objectives of our trade laws and our agreements with other countries.

Our proposals to deal with the problem of diversion are, we believe, fair and measured. They are aimed at preventing circumvention of our trade laws and of the international agreements concluded to effectuate those laws. Our proposals are not protectionist, since they do not seek to limit fairly traded imports. Finally, our proposals have been designed with great care to make them easily administrable by the Department of Commerce and other government agencies.

The suggested provisions would deal with three areas:

1. First, we recommend that a new section be adopted to make "diversionary dumping" an actionable unfair trade practice. Under present law, U.S. industries may not object to imports of products containing dumped raw materials or components. For example, if Brazilian steel subject to a dumping finding were incorporated into steel products from Panama that are sold in the United States, the indirect dumping would not be actionable and American manufacturers would have no recourse to U.S. trade law remedies.

Our proposal would cure this situation by requiring, in any dumping investigation of a finished product, that the fair value of a dumped input be factored into the determination whether that finished product is fairly priced in the U.S. market.

Legislation dealing with diversionary dumping was adopted by both houses of Congress in 1984. However, the provision was deleted in conference in response to representations by the Administration that the provision would be too difficult to administer. Our present proposal deals with the administrability issue by making the diversionary dumping provision applicable only to inputs that are subject to outstanding dumping orders or are covered by intergovernmental restraint arrangements that terminate or suspend a previous dumping investigation.

We believe that our proposal is a reasonable response to the realistic expectation that, once an input product is proved to be dumped, it may be diverted to third country producers who will take advantage of the dumped price in manufacturing downstream products for the U.S. market. Because the provision would only apply to dumped imports subject to an arrangement or after a finding has been made that the input was injuriously dumped in the United States, foreign downstream producers will be on notice and have the opportunity to adjust their prices to offset the unfair advantage they might otherwise enjoy in the U.S. market. The net result will be that offshore producers using dumped inputs would be placed on the same competitive footing as U.S. producers.

2. Our second proposal is aimed at the diversion that is likely to be caused by the imposition of large dumping or countervailing duties. In such cases, we believe that it is reasonable to expect administering authorities to be alert for the possibility of diversion.

Our proposal would require monitoring of increases in imports of downstream products that are likely to be vehicles for diversion. Where large (15% or more) dumping or subsidy duties have been imposed on input products such as steel -- or where a restraint agreement is used to settle a dumping or subsidy case involving large (15% or more) preliminary determinations of unfair trading -- U.S. producers would be able to identify to the Commerce Department other products in which the dumped or subsidized output is likely to be used as a major part, component or material. Commerce would refer lists of those downstream products meeting the statutory test to the International Trade Commission which would monitor imports of those products.

In the event imports of monitored downstream products from a foreign country increase by more than 5% in any quarter, the ITC would analyze the increase and give public notice of its findings. Thereafter, the Commerce Department could investigate whether dumping or subsidization is occurring, either directly or by virtue of the dumped or subsidized components, and private industry could initiate an appropriate trade case.

These two proposals are, of course, very similar to and identical in many respects, to the language in H.R.3.

3. Our third proposal would amend the Trade and Tariff Act of 1984 to establish clearer statutory guidelines on "upstream subsidy" investigations. Under most situations, an upstream subsidy is actionable under our trade laws only if it is provided by the government of the country in which the end product is made. One exception to that general rule was incorporated in the 1984 Act to include subsidies paid by a customs union to producers in a member country. We believe that that provision should be expanded to take account of the realities of trade within a customs union. By definition, products of one member country of a customs union are treated as domestic products of other member countries. Consequently, it makes no economic difference whether a subsidy on a component is paid by the country in which an end product is made or paid by another member country.

A perfect example of this situation can be found within the European Community. Cold finished bar markers in the UK have access to subsidized hot rolled bar produced by British Steel. If they purchase that product, their cold finished bar exports to the United States would be subject to upstream subsidy proceedings. However, under present law, the UK producer could buy French hot rolled bar and immunize itself from U.S. trade laws. Since French steel is freely traded in Britain on the same basis as that sold by British Steel, that result makes no economic sense.

A second proposed change in the upstream subsidy law relates to determinations whether a subsidy on an input product confers a competitive benefit on an imported "downstream" product. Our proposal would require that, if the input is already subject to a countervailing duty order or a suspension agreement, and imports of the downstream product have increased since that order or agreement came into effect, the administering authority will presume that a competitive benefit is being bestowed.

Our proposals in this area are fully consistent with the GATT and the Subsidies and Antidumping Codes. The GATT permits the use of a "cost of production" analysis in determining a foreign market value of the like product. Under United States law, when Commerce has "reasonable grounds to believe or suspect" that foreign sales are being made at less than the cost of production, the "constructed value" may be used. That method permits Commerce to disregard any component cost that "does not fairly reflect" the true costs of that input. Consequently, the true costs of dumped components can be addressed in a diversionary dumping case consistently with the GATT and with current U.S. law.

A Private Remedy For Dumping

Under current law, domestic companies that are injured by dumped imports cannot, as a practical matter, be compensated for the injury caused by this unfair trade practice. Under the dumping statute administered by the Department of Commerce, the only penalty is a duty assessed on future imports, which is remitted to the U.S. Treasury. Although the Revenue Act of 1916 has long provided a private right of action for injury from dumping, that statute has never been used successfully because, as a criminal statute, it requires proof that the defendant intended to injure the U.S. industry. Thus, neither the traditional dumping statute (with its prospective, noncompensatory relief) nor the 1916 Act (with its criminal intent requirement) provides a viable means for domestic industries to obtain compensation for injury inflicted by dumped imports.

Currently, the only penalty imposed on foreign producers who violate the dumping law is a dumping duty which is assessed on future imports. Dumping is therefore not deterred because violators know that they will not be punished for past behavior; they therefore can wait until an administrative order is issued before changing their commercial practices. In addition, the dumping duty is remitted to the U.S. Treasury; companies harmed by dumped imports are not compensated for their loss.

Our proposal would create an effective damages remedy by amending the existing Revenue Act of 1916. However, these legislative modifications would not alter the basic burden of proof that has existed under that Act since 1916. In other words, domestic companies would still only be able to obtain compensation by proving that foreign merchandise is "commonly and systematically" sold in the U.S. market at prices "substantially less" than the actual market value or wholesale price of such goods in the foreign market. These criteria are more stringent than those found in the dumping statute administered by the Commerce Department. The proposed amendments would make the following modifications to the 1916 Act:

- Permit suit against a foreign manufacturer or exporter upon proof that the defendant knew or had reason to know the article was being imported or sold within the United States.
- Declare the "intent to injure" standard satisfied upon proof that the defendant knew or had reason to know that the article was being sold in the United States at a price substantially less than the actual market value or wholesale price of such articles.
- Reduce the treble damages penalty to single damages and decriminalize the statute.

National Security Trade Cases

Section 232 of the Trade Expansion Act of 1962 allows for cases to be brought -- and relief to be granted -- due to imports that threaten U.S. national security. We believe that surging imports of vital manufactured products poses a growing threat to America's national security. This makes it especially important that petitioners in Section 232 cases be given the certainty of timely government responses. At present, however, there are no strict time limits on Presidential decision-making in such cases. For example, in the Section 232 petition filed by the National Machine Tool Builders Association in March 1983, it took more than three years to get a Presidential decision (to pursue machine tool VRAs with major foreign suppliers). As a result, during those three years, imports continued to wreak untold damage on an industry vital to the U.S. defense base.

Congress should -- at minimum -- impose a strict time deadline on decisions by the President in Section 232 cases. We, therefore, support H.R. 3's shortening of the Section 232 time line for decisions by the Secretary of Commerce. However, we urge Congress to review, and give further guidance on, the list of factors the Executive Branch should consider in making determinations under Section 232, e.g., whether negative determinations should be allowed based on the fact that surging imports come from U.S. allies as was the situation in the 232 petition brought by the U.S. fastener industry.

Small Business Access To Trade Remedies

Small businesses do not presently have access to remedies under international trade law. Small business assistance available through the Commerce Department or Office of the U.S. Trade Representative is sufficient to forewarn the small businessman that the cost of presenting an effective case before the International Trade Commission might approach $500,000, perhaps more than the liquidated value of his company. He would also learn that, if successful, any remedy would be in the form of duties paid by the respondent to the U.S. Treasury.

Two steps are necessary to remedy this. First, an expedited, low-cost, "short form" procedure for cases brought before the ITC should be developed. Secondly, because the costs associated with filing and pursuing a case under our dumping and subsidy laws are extremely high, due to the complexity of these laws, many small businesses find that relief from unfair trade practices is beyond their reach. When there is no prospect of recovering the costs of bringing a successful unfair trade case, many petitioners cannot justify the large financial risk of initiating a trade complaint, no matter how strong the case. To remedy this situation, small business petitioners ought to be able to recover attorney/consultant fees in successful trade cases. Such reimbursement could be provided from the collection of antidumping and countervailing duties.

Having highlighted these few areas in a very comprehensive piece of legislation, we wish to reiterate our appreciation to all members of the Committee for taking up the trade issue so expeditiously in this historic 100th Congress. Thank you for your interest and attention.

Representation:
35 Trade Associations
$95.6 billion of annual sales
1.966 million jobs
29,859 plants

Metalworking
Trade Coalition

C/O Forging Industry Association (Treasurer) · 55 Public Sq., Cleveland, OH 44113 · [illegible]

REGULAR MEMBERS

Forging Industry Association
National Screw Machine Products Association
American Pipe Fittings Association
National Tooling and Machining Association
Alliance of Metalworking Industries

Cast Metals Association

Metal Castings Society
Steel Founders' Society
Non-Ferrous Founders' Society

Valve Manufacturers Association
National Association of Chain Manufacturers
Metal Treating Institute
American Metal Stamping Association (Washer Div.)

Industrial Fasteners Institute
Hand Tools Institute
Welded Steel Tube Institute
Association of Die Shops International
American Die Casting Institute

Steel Plate Fabricators Association Inc.
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Brass and Bronze Ingot Institute
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Association of Brass & Bronze Ingot Mfgrs.

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SUPPORTING ORGANIZATIONS

American Iron and Steel Institute
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Specialty Steel Industry
National Machine Tool Builders Association
Hack and BandSaw Manufacturers Association of America
National Coil Coaters Association
Spring Manufacturers Institute
Cold Finished Steel Bar Institute
International Die Sinkers' Conference
The Ferroalloys Association
Cast Iron Soil Pipe Institute
Builders Hardware Manufacturers Association, Inc.
National Lime Association

TRADE REFORM ACTION COALITION

TO: Trade Reform Supporters

FROM: The Trade Reform Action Coalition (TRAC)

DATE: February 11, 1987

SUBJECT: Dumping and Subsidy Law Priorities and Other Key Proposals for Omnibus Trade Legislation

INTRODUCTION

There is a bipartisan consensus in both houses of Congress that omnibus trade legislation, including stronger U.S. trade laws, should be enacted in 1987. The Trade Reform Action Coalition[1] (membership attached) agrees with, and actively supports, this Congressional consensus.

TRAC supports the objectives of restoring U.S. international competitiveness and eliminating the record U.S. trade deficits that have caused massive damage to our manufacturing base. To accomplish these goals, the United States requires a more forceful trade policy. To revitalize the U.S. manufacturing base, we need to correct the many flaws in Sections 201 (injury) and 301 (unfair trade practices) of the Trade Act of 1974; insert strict time lines in Section 232 (national security) of the Trade Expansion Act of 1962; and limit tariff-cutting authority with respect to import-sensitive products. Yet, if American industry is to be competitive in the U.S. market, it must also have effective tools to deal with the market distortions caused by dumped and subsidized imports. Without fair trade in the U.S. market, we will not be able to solve our "big picture" trade problem. Therefore, the omnibus trade bill that is passed by the Congress this year must include key dumping and subsidy law changes.

I. Dumping and Subsidy Law Issues

1. DIVERSION. This problem occurs when dumped or subsidized products are used as raw materials or components in so-called "downstream"

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[1] While not all TRAC-related groups agree necessarily with each detail of every proposal, all support the basic thrust of TRAC's recommendations. In addition, many TRAC-related groups support other generic trade law reform proposals not specifically addressed in this package (e.g., strengthening U.S. protection of intellectual property rights).

products. Two areas of primary concern relate to "diversionary dumping" (addressed in H.R. 3, S. 439 and S. 490) and "upstream subsidies" (addressed in S. 439). Examples of "diversionary dumping" occur if Peruvian yarn, subject to a dumping finding, is incorporated into sweaters (from Peru or elsewhere) that are sold in the United States; or if dumped French steel, subject to a quota Arrangement, is incorporated into British machinery that is then exported to the U.S. An example of "upstream subsidies" occurs when subsidized Brazilian steel is incorporated into a Brazilian farm implement that is sold in the United States. Current practice, however, is not to extend the upstream subsidy law across national boundaries, e.g., when subsidized French or Italian steel is used in a German machine tool that is sold in the United States.

Solution: Legislation to:

- provide the right to redress the injury that occurs when imported products contain dumped components (at present, only subsidized components are partially covered by U.S. trade law.);
- permit the International Trade Commission to monitor and, if warranted, the Commerce Department to investigate imports of products that contain components or raw materials subject to (a) large antidumping or subsidy duties or (b) a quota arrangement;
- enlarge the third-country application of current upstream subsidy law from subsidies paid by a customs union to subsidies paid or authorized by a customs union or its members; and
- address the unfair trade practice that occurs when foreign producers charge one price for raw materials used in products consumed domestically, and another (lower) price for raw materials used in products that are exported.

2. INJURY DETERMINATIONS.[2/] The International Trade Commission (ITC) is required to follow the statutory guidelines set down by Congress in determining whether there has been material injury to a domestic industry. Recently, however, some Commissioners have used extraneous factors in determining injury. These have no basis in law and flout Congressional intent. Another key problem is "cumulation." The 1984 Trade and Tariff Act allowed for cumulation, the combining of unfairly traded (dumped and subsidized) imports from several countries to determine if, in aggregate, they injure a domestic industry and thus require remedies to offset the unfair trade practices. However, as recognized in H.R. 3 and S. 439, the ITC has tended to interpret this provision more restrictively than Congress intended. The result has been denial of relief to industries injured by unfairly traded imports.

[2/] A third issue related to injury determinations -- involving products where price is the predominant market factor -- is dealt with under "miscellaneous amendments."

Solution: Legislation to:

- clarify that the ITC may only look at the volume, price and impact of imports when considering whether material injury to a domestic industry has occurred.

- require the ITC to assess the combined impact of unfairly traded imports on a domestic industry. Such imports would be combined whether dumped or subsidized; irrespective of their geographic distribution in the U.S.; whether or not they are from countries that have signed the GATT Subsidies Code; and whether they are under investigation, are covered by quantitative restraint (QR) Arrangements or by recent (within 12 month) orders or suspension agreements that do not involve QRs. In addition, cumulation would be mandatory in threat of material injury determinations.

3. PRIVATE DAMAGES. As recognized in H.R. 3 and S. 361, if a domestic producer is injured by dumping, it currently has no effective private damages remedy to compensate it fully for the injury that has occurred. Current law only provides relief for injury from future imports, which is not a sufficient deterrent to predatory dumping. Also, as recognized in S.361, current law provides no opportunity to recover for customs violations, including fraud.

   Solution: Legislation to create effective damages remedies that would permit domestic producers to receive compensation for the full extent of injury caused by dumping and customs fraud.

4. SUBSIDIES CODE COMMITMENTS: In the past, when the U.S. has accepted commitments by foreign governments to eliminate subsidies (and the U.S. has granted the benefit of an "injury test"), there have been instances where such commitments either have not been honored or have been ineffective.

   Solution: Legislation that would essentially codify existing Administration practice by requiring both strong foreign government subsidy commitments and full compliance. This would ensure that all bilateral subsidies agreements include at least the elements of:

   - phase out -- the commitment to eliminate all export subsidies in a specified period of time;

   - standstill -- the commitment not to increase or add new export subsidies; and

   - provisional application -- the understanding that the injury test will be revoked following violation of the agreement.

5. DEFINITION OF SUBSIDY. Under current law, duties to offset domestic subsidies provided by foreign governments can only be applied

against loans that are inconsistent with commercial considerations and against the provision of goods or services on preferential terms.

Solution: As recognized in H.R. 3 and S. 439, it should be possible to apply offsetting duties against subsidized imports, whether they have benefited from loans that are inconsistent with commercial considerations or from loans made on preferential terms; likewise, countervailing duties should apply not only against goods or services provided on favorable terms, but also against goods or services that are offered on terms inconsistent with commercial considerations.

6. NON-MARKET ECONOMY (NME) SUBSIDIES. Present countervailing duty law has been interpreted as not applying to imports from non-market economies. (TRAC is currently studying the issue of dumping by NMEs.)

Solution: Countervailing duty law should explicitly recognize that non-market economy countries can and do subsidize their exports to the U.S.

7. MISCELLANEOUS AMENDMENTS. A number of additional problems continue to reduce the effectiveness of these laws.

Solution: Legislation to:

- ensure that the Commerce Department does not use improper adjustments when calculating dumping margins;
- clarify that the U.S. government is not exempt from paying penalty duties when it imports dumped and subsidized products;
- create a better way for determining injury in cases involving products where price (not product differentiation) is the most important market factor; and
- permit recovery of attorney/consultant fees in successful trade cases.

II. Section 201 Escape Clause Issues

Section 201, the so-called "escape clause", has not been effective to provide relief or to promote adjustment.

Solution: Amendments to:

- reduce the injury causation standard from "substantial cause" to "cause";
- clarify that the term "cause" does not exclude relief in situations where other factors contribute significantly to injury;

- require that industry adjustment (not phase-out) take place, but limit the ability of the President to disregard the recommendations of the ITC for relief;
- strike the language in current law that urges that import relief after three years be phased down "to the extent feasible";
- give the President authority to increase (as well as reduce) the level of relief to recipient industries; and
- ensure that any additional Presidential relief options -- such as unfair trade filings, antitrust exemptions or multilateral negotiations -- supplement, and not replace, existing 201 remedies unless requested by the petitioner.

III. Section 232 (National Security Trade Case) Issues

Section 232 currently lacks any requirement that the President make a decision within a specified period of time. This discourages Section 232 petitions and is potentially harmful to U.S. national security.

Solution: Legislation to impose a strict time deadline on Presidential responses in Section 232 cases following an affirmative decision by the Secretary of Commerce.

IV. Section 301 Issues

Section 301 has historically failed to address promptly foreign government acts, policies and practices that are unreasonable, discriminatory or burdensome to U.S. commerce.

Solution: Amendments to:

- clarify that Section 301 applies to state enterprises that sell goods and services on terms inconsistent with commercial considerations;
- establish a separate track for foreign industrial targeting;
- permit disclosure of confidential business information under administrative protective orders; and
- require USTR to send out questionnaires to foreign governments and verify all information received.

V. Tariff-Cutting Authority

U.S. manufacturing industries are today much worse off than they were before the last round of multilateral trade negotiations (the Tokyo Round), which concluded in 1979. Nevertheless, the U.S. is now embarked on a major new round of trade negotiations, where it is expected that the price to be paid for opening up developing country markets to U.S. exports, services and investments will be further U.S. tariff cuts on manufactured goods.

Solution: Legislation that would allow the President to enter into a new trade round with authority to negotiate tariff reductions, but language that would limit the scope of such authority to those products currently eligible for duty-free treatment under the Generalized System of Preferences (GSP). This would ensure that tariff-cutting authority does no further damage to import-sensitive U.S. manufacturing industries. In addition, because there are probably many products currently eligible for GSP that are also import-sensitive, there should be strict limits set on tariff cuts for these products as well.

* * *

Trade Policy and Competitiveness Issues

The U.S. can no longer afford to treat trade and competitiveness policy as disconnected from other vital policy concerns, because our deepening trade crisis is a threat to U.S. national security as well as to our standard of living. Because this crisis has hit our manufacturing sector the hardest, we need to state clearly that, if America is to be a world-class economic power well into the 21st century, we cannot be simply a service economy. While TRAC, at this time, is not making specific legislative proposals in the area of trade and competitiveness policy, we think it is critical that the Congress deal with the following:

- The eroding U.S. manufacturing base;
- The central role of the U.S. manufacturing trade deficit in our overall trade deficit;
- The need to preserve vital U.S. industries, not debate "free trade" versus "protectionism";
- The fact that U.S. trade deficits are comprised of two parts -- sluggish U.S. exports and rapidly rising U.S. imports;
- The exchange rate imbalance that continues with key U.S. trading competitors outside of Western Europe and Japan;
- The size of the federal budget deficit and its relationship to the U.S. trade deficit;
- The ability of the U.S. Customs service to enforce its rules and regulations;
- The need to review in a comprehensive way U.S. laws, policies and procedures in regard to foreign trade zones and subzones;

- The impact on our international competitiveness of U.S. tax laws, anti-trust rules and environmental regulations;
- The unnecessary controls that continue to limit U.S. export opportunities;
- The fact that the world in 1987 (with pervasive state ownership, control and financing of industry) is very different from what it was in 1947 when the GATT was founded; and
- The probability that the Uruguay Round of new GATT negotiations will not be a panacea for our growing trade crisis.

Chairman GIBBONS. Fine. Let me go with a first question, if I could. You were making some mention about the European community and upstream subsidies. Can you give me some kind of illustration there?

Ms. HOGAN. Mr. Chairman, if I could respond to that, in our formal written statement we do mention that we have a third proposal in the diversion area and it does stem from the action that this committee took in 1984 where the committee saw fit to legislate the upstream subsidy provision which in fact became law. You will recall, Mr. Chairman, at that time we also had downstream dumping provisions which made it a long way, but it did not become law.

Chairman GIBBONS. We could not get it all the way, that is right.

Ms. HOGAN. Exactly. However, in the upstream subsidy provision we did carve out a section for customs unions and an example that we cite in our prepared statement is one that can be found within the European Community and relates to cold-finished steel bar makers in the U.K. who have access to subsidized hot rolled bar produced by British Steel. If they purchase that product, their cold finished bar exports to the United States would be subject to upstream subsidy proceedings under our 1984 statute.

However, under present law the U.K. producer could buy French hot rolled bar and immunize itself from U.S. trade laws, since French steel is freely traded in Great Britain on the same basis as that sold by British Steel. That result makes no economic sense and it is because of that particular carve out in the 1984 statute, and it is our feeling that that sort of a situation should be remedied.

Chairman GIBBONS. That is a good point. I appreciate—we have got one more witness.

Mr. Gieg?

STATEMENT OF L. FREDERICK GIEG, JR., PRESIDENT, RMI CO.

Mr. GIEG. My name is Fred Gieg and I am president of the RMI Co. We are a producer of titanium, which is a critical strategic metal mainly used in the aerospace industry. Our serious trade problems have emanated mainly from Japan, which in recent years, has tripled its capacity, way beyond their home market demand. The Japanese, therefore, at one point had secured about 20 percent of the U.S. market and had done this by shipping product 30 percent below fair value.

In 1983, our company entered a dumping suit in which we were successful, but we have little comfort at this point because, as we all know, the Japanese are very clever and they are circumventing the system. They have raised their production to 75 percent capacity utilization in order to reduce their costs because our titanium business is a very volume oriented business.

They then presented to the Department of Commerce new costs which would make it possible for them to remove the 28 percent antidumping tariff that had been imposed because of our winning the dumping suit. This has put us in a very difficult position except for one thing: We should be protected because the higher yen makes it difficult for Japan to compete in the U.S. market. However, we are still worried that the Japanese might dump their inventories in the U.S. market and worry about the consequences later. This is where we have a great fear, that is even though they would know that they would be dumping product because of the current high-value yen, they still would ship to the U.S. market. So, based on our experience, we think that the antidumping law and other trade laws should be strengthened to prevent circumvention—and in other respects.

The two or three key points that we would like to make here are, first of all, that unfair trade laws should apply to purchases for the national defense stockpile. We lost an order of a very large consequence to the Japanese, something in the area of 9,000 tons, one of the largest orders ever placed at the GSA, this is where we proved our dumping, and of course we were disappointed in losing this order.

We were even angrier when we learned that the Commerce Department was to continue the exemption from dumping laws for future government purchases, even though we had proved that dumping had occurred, even at that point its ruling was still made that the exemption would exist for future government purchases.

Chairman GIBBONS. I do not remember that in the statute. Was that in the statute?

Mr. GIEG. Let me just read what occurred. The reasons given by the Department of Commerce for its decision was an earlier decision by the Department of the Treasury in the early-1960's. The Department of Commerce said "Treasury's decision to waive these antidumping and countervailing duties was erroneous." If we had been deciding the issue in 1961, we would have found that the better interpretation is that antidumping and countervailing duties should apply. Despite these conclusions, we are swayed by the fact that Congress acquiesced in the practice since 1961, giving it the imprimatur of law.

Now, I do not think any of——

Chairman GIBBONS. I have been on this committee since 1969 and I do not remember that we have ever had any statutory exemption from countervailing or antidumping discussion in my life, and I go back further than most of the bureaucrats in this committee. [Laughter.]

Mr. GIEG. When this decision was made, I do not think any of us really believed that Congress was aware of this 1961 Treasury situation.

Chairman GIBBONS. I was just told that we have already got it in H.R. 3, but that is hogwash, you know that.

Mr. GIEG. I sure do.

Chairman GIBBONS. We never acquiesced in it because we always thought that they were covered.

Mr. GIEG. Right, and that is——

Chairman GIBBONS. I could not believe what I was hearing there for a while.

Mr. GIEG. Another issue that we would like to address is the certification of information accuracy. Under 139(d), it is very simple and straight-forward. It requires any person providing factual information to the Department of Commerce to certify its accuracy. Now, after we had won this dumping suit and then after a year the

Japanese were allowed to submit new cost information, the Department of Commerce sent two people to Japan who had absolutely no experience in titanium, knew nothing about the cost situations relative to titanium, and these are the people that were to come back and recommend decisions to be finally made.

And our great frustration with this was the fact that in coming back, not having the experience, the expertise, et cetera, that was needed to make such decisions, that we feel very strongly, as titanium producers, that we should be part of that analysis, that we have the information, we have the expertise, we have worked not quite as long as Mr. Simmons in this area, but we have worked a long time in trying to determine our own situation relative to our ability to compete internationally. And we feel that it is only right that we should we part of that.

Second, we think it is important that a senior official and the general counsel representing these firms sign off on the fact that the information is accurate, that the information is not misleading. To be charitable, the Japanese information on this most recent situation was unbelievable—no costs of inventory, all kinds of different areas that were not addressed.

For example, in the case of the Japanese, during this period when they ran their facilities at 75 percent capacity, with the market nowhere near that, they ran up an inventory of 20 million pounds which represents our total production for a year, and they are now sitting with 20 million pounds on their shores ready to dump into this country, which scares us to death.

Now, the yen——

Chairman GIBBONS. The staff tells me that that is also included in our proposed legislation here, that it is a reasonable suggestion.

Mr. GIEG. I do not think I could add anything to Mr. Simmons' discussion on the private right of action. We totally agree and totally support it. The only thing we want to make certain of is it does get incorporated, and I think for me to say anything more on that subject would be not necessary because he has covered it well.

Chairman GIBBONS. There is going to be lobbying here on that a little more. [Laughter.]

Mr. GIEG. Finally, one other suggestion we would like to discuss is customs fraud. We have been aware of the fact of certain situations occurring in our business. We know that customs fraud is already criminal, but again the need for the private right, because of the fact that the Customs Service is under staffed, they do not have the finances to do all they should be doing to enforce the Customs laws. In our case, we have waited a year and a half for a decision, and while we have been told that we have a very good case, that we need to do nothing further, that a decision will be forthcoming, we have heard nothing and it has gone on and on and on.

We are not a bit critical of the customs group because it is very difficult, with all the various problems they have and what they are trying to investigate, but again the private domain would help us in this situation to bring these cases more quickly and more efficiently to the forefront and be concluded.

Thank you.

[The prepared statement follows:]

BEFORE THE SUBCOMMITTEE ON TRADE
OF THE COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

TESTIMONY OF

L. FREDERICK GIEG, JR.
President, RMI Company
Niles, Ohio

In Hearings on Comprehensive Trade Legislation

February 26, 1987

My name is L. Frederick Gieg, and I am President of RMI Company, one of the largest U.S. producers of titanium and titanium mill products. We currently employ more than 1400 persons at our plants in Ohio, Missouri, Pennsylvania and Utah and we account for 35 percent of U.S. production of titanium metal. Titanium is a critical strategic metal. Due to titanium's unique strength, durability, corrosion resistance, and light weight, its major applications are in production of critical rotating components of jet engines, the air frame structure of defense and commercial jet aircraft, chemical processing equipment, and other industrial equipment.

The titanium industry, like many U.S. industries, faces a serious trade problem and, as is so often the case, the core of the problem is Japan. Since 1978, Japanese titanium sponge producers have more than tripled their capacity -- to a level far greater than any conceivable demand for titanium sponge in the Japanese home market. The capacity build-up is clearly export-related. The Japanese have captured a significant share of the U.S. market and we fear that the huge inventories of titanium sponge now held in Japan will soon be unloaded in the United States at dumped prices, despite the fact that Japanese imports of titanium sponge are already subject to an antidumping order.

In 1983, RMI initiated an antidumping action against imports of titanium sponge from Japan. We were successful -- the Department of Commerce found that the Japanese producers were dumping their excess production in the U.S. market by an average of nearly 30 percent below "fair value." However, even though we "won" the case, our experience leaves us with very little comfort about in the effectiveness of U.S. trade laws. We now face a situation where, according to public sources, Japan's titanium sponge producers have accumulated some 20 million pounds in inventory (produced in order to lower per unit costs and thereby circumvent the dumping order) -- that is nearly one half of total projected U.S. demand for 1986 -- and, we fear, the U.S. market has been targeted for yet another major export drive. The rise in the value of the yen and drop in the value of the dollar should make it impossible for the Japanese to sell here without dumping by a considerable margin, but the antidumping law as currently structured and implemented may not be sufficient to prevent renewed dumping.

I come here today to testify in support of certain provisions of H.R. 3 that would help strengthen U.S. trade laws. My views on these issues stem directly from my experience during the past three years with the current law.

1. The U.S. "Unfair" Trade Laws Should Apply to Purchases for the National Defense Stockpile

RMI Company brought its dumping case against Japanese titanium sponge imports after it had lost the largest single U.S. contract awarded in the past several years to dumped imports from Japan -- a contract to supply the United States Government National Defense Stockpile with titanium sponge. We are disappointed when we lose any important contract; we were a good deal more than disappointed -- we were angry -- when we understood that our own government had awarded the lion's share of its supply contract to unfairly traded imports from Japan. And you probably can imagine my shock when, even after we had proven our dumping allegations, I was told that the dumping order against Japanese imports would not apply to future National Stockpile purchases by the GSA.

The explanation that I was given was that the U.S. Government is free to stockpile dumped imports because of an administrative decision made by the Treasury Department back in the early 1960s. The Commerce Department investigated the matter as a result of our antidumping case and, even though Commerce disagreed with the earlier Treasury Department practice and the legal basis upon which it rested, it refused to reverse the Treasury ruling. In what I think is a miserable example of institutional timidity, the Commerce Department upheld the Treasury practice by shifting blame to Congress.

Let me quote from the Department of Commerce finding:

> [We] find the reasoning behind the original decision to waive these [antidumping and countervailing] duties to be erroneous . . . . if we had been deciding this issue in 1961, we would have found that the better interpretation is that antidumping and countervailing duties should apply.
>
> Despite these conclusions, we are swayed by the fact that Congress acquiesced in the practice since 1961, giving it the imprimatur of law.

I do not, for a moment, believe that Congress was fully aware of, much less acquiesced in, a 1961 Treasury exemption to the antidumping and countervailing duty laws for Stockpile purchases. Section 139(a) of H.R. 3 would do what Commerce has, in effect, invited the Congress to do -- it overturns an ill-conceived and, to my mind, illegal administrative exception to the reach of the antidumping and countervailing duty laws by applying antidumping and countervailing duties to imports purchased by the government for the National Stockpile. I urge you to maintain Section 139(a) of H.R. 3 in any trade legislation to be sent to the President, although I would like to see this done in a slightly revised way. I have attached at Annex A to this testimony an amendment to Section 139(a) that would not only subject Stockpile purchases to the reach of the antidumping and countervailing duty laws but would also require the government to take liability for such duties into account in awarding procurement contracts.

2. Certification of the Accuracy of Information Submitted to the Department of Commerce and the U.S. International Trade Commission in Antidumping and Countervailing Duty Investigations

The second provision of H.R. 3 which we strongly urge this Committee to adopt is contained in Section 139(d). Section 139(d) is simple and straightforward -- it requires any person providing factual information to the Department of Commerce and/or the U.S. International Trade Commission in connection with countervailing and antidumping proceedings to certify that, to the best of his or her knowledge, such information is accurate and complete.

Under current Department of Commerce practice, no one is required to state that submissions in trade cases are complete and accurate. As a result, the information submitted in trade cases is often unreliable and the outcome can depend upon how successful a foreign company is in "hiding" damaging data. In our own case, two of the three Japanese producers that submitted cost of production data to the Department of Commerce submitted information that can most charitably be called misleading. As a result of an unusually thorough verification, most of the pertinent facts finally were found and appeared in the record. However, I suspect that there have been many other cases in which misleading information has been submitted in the course of antidumping and countervailing duty investigations and the truth has never been uncovered.

There is no excuse for allowing antidumping and countervailing duty investigations to degenerate into exercises in obscuring the truth. One of the reasons that parties to a Department of Commerce investigation feel they can get away with distortions of the facts is that nobody is required to attest to the completeness and accuracy of submissions and there are no effective sanctions against the submission of misleading or false statements; under current practice, no individual is held accountable for such statements. While a requirement that all submissions be certified as accurate and complete to the best of that person's knowledge does not offer protection against deliberate provision of misleading data, it will at least fix accountability on a specific person, and could result in criminal sanctions. Other government agencies (e.g., the Federal Trade Commission, the Securities and Exchange Commission) routinely require certifications of the accuracy of documents submitted to them. There is no reason why the Department of Commerce should not require similar assurances in connection with submissions in countervailing and antidumping proceedings.

If this Committee wants to go a step further than H.R. 3 currently does in assuring honest submissions of data in unfair trade investigations, it could require that, in addition to a certification by a company official, counsel that assist and advise in the preparation of a submission to the Commerce Department also provide a statement that, to the best of counsel's knowledge and belief, the submission is not misleading in any material respect. While counsel might object to being put on the spot, such a requirement would inject a healthy "due diligence" element into trade investigations that does not now exist. If counsel were required to state that, to the best of counsel's knowledge and belief, a submission is not misleading, it would provide a powerful check on the reliability of submissions.

3. Private Right of Action Against Dumping

One of the more controversial provisions of H.R.3 is Section 138, that provides a private remedy for injury resulting from dumping. I strongly support such a private right, and, if necessary, would urge this Committee to consider modifications to the language of Section 138 if it concludes that modifications are necessary to respond to legitimate complaints about the provision as currently drafted. My concern is that, in the face of strong opposition, the Congress will be inclined to drop the provision altogether rather than seek to modify it. Unless the Congress is able to develop some way of forcing a foreign company to compensate a U.S. industry for past damages which result from a deliberate decision to dump its production in the U.S. market, I do not think that the dumping problem will ever be resolved.

There is, as you know, a provision of current law (i.e., The Antidumping Act of 1916) that confers a private remedy for injury caused by dumping. Unfortunately, the 1916 Act has been a dead letter because it has been interpreted as a provision of antitrust rather than trade law. The principal problems with the 1916 Act would, I believe, be cured if (1) the requirement of "intent" to injure were changed to a "knowingly" injure standard, and (2) if the Congress would make it clear that "injury to an industry" is separate and distinct from "injury to competition."

Personally, I prefer the language currently in H.R. 3 to alternative along the lines outlined above, but I also know that the opposition to the current language is very strong. The basic point I want to make to you is that a compromise on some specifics in the proposed legislation is far preferable to no private right at all.

4. Private Right of Action for Customs Fraud

This brings me to a fourth provision for which I would like to urge your support. Last year, Senator Spector introduced a bill, S. 1655, which contained a private right of action for damages resulting from customs fraud. Unlike dumping, customs fraud is criminal activity. Fraudulently entered imports often injure a U.S. industry. Since customs fraud is already a well-defined criminal activity, I can think of no good reason to oppose a private remedy for injury caused a U.S. company in its business as a result of fraudulently imported merchandise.

I understand that this and other Committees of the Congress have looked into the ability of the Custom Service to enforce U.S. import laws and have found that the resources are stretched very thin indeed. At the same time, customs fraud problems are real and growing. They demand attention. Elaborate schemes to import textiles and steel mill products in violation of import quotas have received much attention. We are concerned that the same sort of schemes could be developed to avoid antidumping duties on titanium sponge imports and would not be at all surprised if other companies that have won antidumping cases have similar concerns.

At Annex B to this testimony I am attaching a proposed addition to H.R. 3 that creates a private right of action in order to redress the injury to a domestic industry that results from fraudulently entered imports. I hope this Committee will give the customs fraud issue full consideration. The proposal should be viewed an important supplement to other initiatives designed to improve customs law enforcement.

I thank you for your time. If you have any questions concerning, or want more information on, the matters addressed in my testimony, or on any other issues, I will be happy to respond.

Attachment A

Suggested Modification of Section 139(a) of H.R.3

(a) APPLICATION OF COUNTERVAILING AND ANTIDUMPING DUTIES TO GOVERNMENTAL IMPORTATIONS.-- Section 771 (19 U.S.C. 1677) is further amended by adding at the end thereof the following new paragraph:

"(18) APPLICATION TO GOVERNMENTAL IMPORTATIONS.--

> Merchandise imported by, or for the use of, an agency of the United States Government is not exempt from the imposition of countervailing duties or antidumping duties under this title. Any such duties shall be taken into account by such agency in awarding procurement contracts.

Attachment B

Suggested Private Remedy for Injury Caused by Imports That Are Fraudulently Entered Into the United States

Part V of title III of the Tariff Act of 1930 (19 U.S.C. 1581 eq seq.) is amended by inserting immediately after section 592 thereof the following new section:

"SEC. 592A. PRIVATE ENFORCEMENT ACTION.

"(a) Any interested party who shall be injured in his business or property by any act of fraud or gross negligence that is prohibited under section 592(a) may bring a civil action against any person committing, or conspiring to commit, or knowingly participating, directly or indirectly, in the commitment of, such act in the district court of the District of Columbia or in the Court of International Trade, without respect to the amount in controversy.

"(b) Upon proof by an interested party that he has been damaged by any act that is prohibited under section 592(a), such interested party shall--

"(1) recover treble damages for the injuries sustained,

"(2) be granted such equitable relief as may be appropriate, which may include an injunction against further importation into the United States of the articles or products in question, as appropriate, and

"(3) recover the costs of suit, including reasonable attorney's fees.

"(c) For purposes of this section--

"(1) The term 'interested party' means--

"(A) a manufacturer, producer, or wholesaler in the United States of a like or competing product, or

"(B) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product or a competing product in the United States.

"(2) The term 'like product' means a product which is like, or in the absence of like, most similar in characteristics and uses with products imported into the United States in violation of section 592(a).

"(3) The term 'competing product' means a product which competes with or is a substitute for products being imported into the United States in violation of section 592(a).

"(4) The term damages shall include, but is not limited to, the gross margin on sales lost because of the illegally entered merchandise and the impact of the illegally entered merchandise on the market prices for the like or a competing product.

"(5) Gross margin shall be calculated by deducting the variable cost of producing merchandise from the sales price of such merchandise.

"(6) Lost sales equal to the volume of the illegally imported merchandise shall be presumed to exist unless the person or persons against who a civil action has been commenced under this section shall prove that they did exist.

"(d) The court shall permit the United States to intervene in any action, suit or proceeding under this section as a matter of right. The United States shall have all the rights of a party.".

Chairman GIBBONS. Thank you. Let me ask you a question. Titanium is essentially a mined product, is it not?

Mr. GIEG. Yes, it is basically a product that you start with the rutile ore and you make titanium tetrachloride, you combine that with either sodium or manganese and you produce what is called titanium sponge which is your basic product. From that point, it is melted and then you form billets, bars, sheets, as you knew and have heard so many times in steel.

Chairman GIBBONS. Do they mine titanium ore in Japan?

Mr. GIEG. No, not in Japan, mainly in Australia, South America, some in this country, the ore itself that you start with.

Chairman GIBBONS. What makes Japan so prolific at producing titanium if they have to import the ore? What makes Japan so prolific at producing it?

Mr. GIEG. Well, first of all, from the standpoint of Japan, it has been identified as an industry for the future. One of the main reasons, of course is the aerospace situation. Japan wishes to become a very large participant in aerospace, as I know you have heard from other sources. Titanium is an integral part of the whole aerospace industry. This is one of the reasons they have also put a tremendous amount of capital into the titanium industry and are efficient producers, there is no question about it, from the standpoint of their melting practices and their processes.

Chairman GIBBONS. There are no natural advantages though that they have in producing titanium?

Mr. GIEG. No. I feel this way, Mr. Chairman: As far as on a true competitive basis, we feel very definitely that we are competitive with the Japanese in sponge production, and if you are competitive in sponge production you are competitive down the line because actually our costs of making titanium, over 60 percent of our cost is already in the product by the time we melt the ingot. So if we are competitive at that basis, we feel that we are competitive all the way.

Chairman GIBBONS. Is there any evidence that the Japanese titanium industry is subsidized?

Mr. GIEG. Yes. Of course, from the standpoint of the large producers of sponge to start with, Osaka, Toho, some of the finished product people such as Kobi, et cetera, just like has occurred in this dumping suit, we feel very definitely that this is supported by the Government because, as I say, some of the prices that are quoted in this dumping suit were below, way below variable costs, much less fully absorbed costs.

Chairman GIBBONS. The Japanese must import all of the component parts of——

Mr. GIEG. Just the ore.

Chairman GIBBONS. Just the ore.

Mr. GIEG. That would be the main that they would—of course, like energy, like in everything else, but basically the ore product, they could make their own products from that point that go in to making up the sponge and then in turn making the finished products.

Chairman GIBBONS. I see.

Mr. **Simmons**. Mr. Chairman, if I could add something, as an old titanium metallurgist, indeed the Japanese are at a fundamental disadvantage——

Chairman **Gibbons**. Well, that is what I was thinking.

Mr. **Simmons** [continuing]. In the manufacture of titanium since they must import ore, their cost of electric energy, which is a major component, and magnesium, which is the process which is predominantly used in Japan is also highly energy intensive. So all of those factors considered, the only conclusion that one can reach is that the Japanese have chosen to target titanium because, as Mr. Gieg has pointed out, they have targeted the aerospace industry and titanium is essential in the manufacture of turbine engines as well as airframes.

Chairman **Gibbons**. You know, that whole area of targeting is one that I have been involved in for some time, because, you know, I think what you were dealing with here is some kind of very sophisticated way of subsidizing that is done so you cannot see it, you do not have the cash out on the table or something like that but it has got to be—I do not believe in miracles is what I am thinking, is what I am saying. There is some way they have got to have brought that industry up to that stage and it took a lot of investment of some sort, investment that was noneconomic.

Mr. **Simmons**. They made a major investment in the early 1980s, which I have toured, just at the time that the world demand for that product declined sharply. There is no basis on which that capacity could ever be justified and the capital, of course, was supplied by a number of the financial institutions, insurance companies and other manufacturing owners of those companies that produce titanium. You are correct, it is a very subtle system, it is a much more difficult system and it is interesting to note that in all of the cases that we have filed since 1971, with the exception of course of section 201 cases which do include Japan, it has been very difficult for us to establish the necessary evidence to prove dumping or countervailing or subsidized sales by Japan at least in the products with which we are familiar, and yet we are convinced that it has in the past gone on. Many of my Japanese colleagues are quite prepared to admit that it went on at one time, but it is a very difficult thing under our laws to establish the direct relationship, so you have not just the kind of problem in titanium, you have the same kind of targeting that has gone on in semiconductors, they have targeted computers, they have targeted ethical drugs and they have targeted ceramics for the next two decades. I am sure that we are still fighting the last war with regard to——

Chairman **Gibbons**. We are not even in that war at all. We do not even admit that that is the subsidy. We have not been able to get this administration to even—first of all, we cannot even get the State Department to tell us if that goes on. And it is only by other means that we even found out about targeting in Japan. Although they have published it in newspapers—of course, I cannot read their newspapers very well—and although they do it rather openly, for some reason our Government seems to think we should not even watch it, we should not even look at it.

There are some areas of our Government that of course look at it. I am going to see if I cannot get an investigation done on the titanium thing just to see where the bodies are, because these kinds of things disturb me. It is these kinds of noneconomic moves involving government intervention and obviously some kind of subsidy that have just played havoc with the good old straight-forward enterprise system that we have.

I get so sick of hearing the Japanese tell me they believe in free trade, but obviously they classify subsidized trade as being free trade and they obviously must be laughing at us when they do that because they will never tell you or admit that they have got all these subsidies in there. But they had to finance the machine tool thing through the bicycle races. That was about as ridiculous as anything I have ever seen. Nonrecourse loans and closing the market—did they have a closed market on titanium during the times in which they were building their——

Mr. GIEG. As Mr. Simmons said, back in 1981-82—it ended in 1982, it started in about late 1979, of course the industry at that time, because of the major push related to military, the major push in commercial, even some non-aerospace industry, the industry was sold out completely, and as you went into the 1982 situation, with their excess situation and our obviously inability to ship to Japan, the market decreased substantially and, yes, as far as we were concerned we were not able to ship into Japan and the market here dropped through the floor, which gave them a tremendous amount of excess capacity which they in turn dumped into this country.

Chairman GIBBONS. During their buildup period, though, did they exclude our product from their market?

Mr. GIEG. Did they exclude our product during the 1981-82 period?

Chairman GIBBONS. Yes.

Mr. GIEG. Well, I think at that point, to be very frank about it, I think at that point the U.S. producers were all they could do to supply product for our own industry and our own country and we are not particularly interested to Japan.

Chairman GIBBONS. So they could use the excuse that they had to do it in order to get supplies, is that right?

Mr. GIEG. Well, in that period I suppose there would be some question, but really in reality in any kind of normal period we have been unable to ship in there in any kind of competitive basis. Now, that particular period I suppose you could make a very slight case, but our own situation was such that——

Chairman GIBBONS. In the more normal times you were not able to ship into their market, is that right?

Mr. GIEG. No, we have not been able to ship into their market in most recent times of open markets.

Chairman GIBBONS. Where did they get their titanium then during more normal times?

Mr. GIEG. Well, they have from the standpoint of the 1980s, they had their own production which has been expanded radically. For example, the Japanese have expanded their capacity today to about 65 to 70 million pounds of sponge capacity, so obviously they had their own capacity. They only have maybe a 20 to 25 million pound market in a good market, so they would be able to supply it. Today, of course, they expanded and, as Mr. Simmons said, they expanded tremendously to the point of basically tripling their capacity and at the same time having the market drop down substantially so they were stuck with a tremendous amount of excess capacity which they in turn chose to dump into our country until we won the dumping suit. But we are threatened at this point and are quite concerned.

Chairman GIBBONS. I want to thank all of you for coming and for waiting so patiently all day today. You have been very patient. It has been very good testimony and we will conclude today's hearings right now and start again tomorrow morning at 9:30 a.m.

Thank you very much.

[Whereupon, at 4:37 p.m., the subcommittee adjourned, to reconvene at 9:30 a.m., on Friday, February 27, 1987.]

COMPREHENSIVE TRADE LEGISLATION

FRIDAY, FEBRUARY 27, 1987

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, DC.

The subcommittee met, pursuant to call, at 9:35 a.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman Gibbons. Good morning. We are starting 5 minutes late, and my staff tells me I have to be done by 11:30. Let's not waste any time.

Our first witness is a Member of Congress from Ohio, Ms. Kaptur. We welcome you here.

STATEMENT OF HON. MARCY KAPTUR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Ms. Kaptur. Thank you, Mr. Chairman.

It is certainly a pleasure to appear before your committee. I want to say good morning to Congressman Levin. I truly appreciate the opportunity to testify, Mr. Chairman.

Since I appeared before you in this very hearing room a year ago, over 4,000 more manufacturing jobs have been lost in my district, surrounding and including Toledo, Ohio, mainly due to adverse conditions in trade.

Chairman Gibbons. How many?

Ms. Kaptur. Some 4,000.

At the time I testified, the overvalued dollar had begun to fall, and we had hopes we would finally see a turn-around in the trade picture. However, the $170 billion trade deficit for 1986 shows us even with current exchange rates, foreign companies are aggressively playing a game with a different set of rules. History has shown us, in fact, that regardless of movements in exchange rates, foreign market access has not increased, particularly in Japan where markets are closed to U.S. and other foreign products. Mr. Chairman, I am pleased that the administration has decided to work with Congress this year to develop a competitive set of rules for international trade so that U.S. companies can compete again.

I am an original cosponsor of H.R. 3 and commend your personal leadership in moving forward to perfect what has already been endorsed by the House of Representatives last year. Therefore, I am thankful for the opportunity to come before you today to suggest what I think will be effective additions to the legislation, and I would like to address my comments in six areas, the first concerning automotive parts; second concerning foreign trade zones; a third, something I call the diplomatic trade corps; four, ethics and trade negotiations; fifth, the trade data bank; and, finally, mandatory retaliation provision.

Beginning with automotive parts, Mr. Chairman, I am aware some have encouraged you to clear a generic trade bill with no specific references in it to key U.S. industries. I can understand this. However, in view of the fact that critical trade talks on auto parts with Japan are now underway within the Market-Oriented, Sector Specific (MOSS) process, the highest level of bilateral talks now being conducted between our two countries, I am requesting your special attention to this troubled sector and to these trade talks which seem to be barely dragging along.

Incidentally, Mr. Chairman, I am going to submit for the record the results of the midterm review which has been occurring this week in Washington between the United States and Japan and leave it to your committee's judgment as to whether anything very significant has occurred after almost 6 months of negotiations now.

The automotive industry is the bellwether of where this nation is headed industrially. As this committee is aware, my colleague, Sander Levin, and I have been working very hard for almost two years to increase access for U.S. companies to the Japanese automotive parts market. More than half of the $60 billion U.S. trade deficit with Japan last year came from imports of Japanese cycles and parts. Even more alarming is the fact that less than 2 percent of the parts used for vehicles made in Japan are purchased from the United States, and only 20 to 30 percent of the material content of cars assembled here by Japanese companies is purchased from American suppliers. The exclusionary business practices used by the Japanese have now been transferred to our own soil. With the U.S. auto parts industry providing more than twice the workers of the U.S. vehicle assembly industry, this situation is extremely dangerous to the long-term employment and control of this industry in our country.

It is only a matter of time before Japanese transplants, after displacing the native U.S. industry, will move their own supplier companies to the U.S. in increasing numbers. I have been informed that over 300 Japanese companies have plans to move to the United States within the next year.

It is true that some new jobs have been created in Japanese vehicle assembly transplants. However, when the Japanese are importing over 50 percent of the parts content for those cars from Japan, the overall U.S. auto industry experiences a net displacement of jobs as overcapacity increases.

I had hoped the MOSS talks, which you so graciously helped to bring about, would make some difference in this regard. I was encouraged through the process by my good friend, Mr. Levin, who has been the spark plug behind this entire effort. However, little progress has been made. The parties cannot even agree upon how to measure increased volumes of sales, if they were to occur. Further, no target purchase figures have been suggested for Japanese firms to meet.

Thus, I would expect business as usual. Mr. Chairman, I so wanted the negotiations to be fruitful. But they are abysmally in-conclusive and, therefore, it is up to Congress to implement strong measures to force the Japanese car companies to purchase auto parts of high quality and fair price from American producers. They absolutely must not exclude our parts suppliers any longer. They must treat our companies like we treat theirs.

The current trade bill, H.R. 3, does not address these issues sufficiently. Due to the inflow of foreign investment in this industry, the American autoparts industry is particularly vulnerable over the next 3 years.

I would propose to you then that a section similar to the telecommunications title be included in this omnibus bill that would speak directly to the unfair business practices used by Japanese automotive companies, in Japan, in the United States, and in third countries where we are trying to supply parts to them. This title would encourage increased market access by a specified period of time or there would be retaliatory action by the United States.

I will be happy to work with you on this proposal as you move ahead on this legislation. This competitive industry, composed largely of thousands of small to medium-sized companies, who are quality suppliers, is not asking for protection. They are asking for fair access. I recommend that we make sure they are afforded this necessary foundation for trade.

With the assault on our domestic auto parts industry by the inflow of foreign investment, we must also remember that we are being excluded from investing in foreign markets such as Japan. I recommend to you Congressman John Bryant's bill, H.R. 312, which would require full disclosure of the interests behind all major foreign investment in the United States. It would form the basis for allowing new foreign investment here only to the extent that the policies of the foreign investors' home countries are reciprocal. This is both reasonable and fair.

I expect the Energy and Commerce Committee to take action on this bill and perhaps include it in the omnibus measure.

Another issue facing the automotive supplier industry is the current function of foreign trade zones (FTZs) and subzones. FTZs were created in 1934 to increase jobs in the U.S. and to stimulate U.S. exports. From my information, foreign trade zones today are primarily being used to import foreign components for manufactured goods—most often motor vehicles—install them into a finished or assembled product, and pay the duty on the entire product at the rate of the finished product rather than the higher component rate. This saves importers a hefty chunk of duties, which are usually tax deductible anyway, and makes imported components unfairly attractive.

What is interesting to note is the increasing number of foreign-owned companies in the United States applying for and being granted zone status so they can import their components from their home country. In my view, this is not the original intent of the law, which was to expand U.S. export opportunities. As a matter of fact, approximately 80 percent of the goods being imported into foreign trade zones are used for domestic consumption. There are currently 95 subzones operating, and there are 75 new applications pending or about to be filed. It is essential for Congress to deal with this issue to monitor the uses of foreign trade zones and to evaluate whether they are being used for the original intent. If it is not, we must alter the law to give these imports the same treatment as all other imports. The increase in revenue to our Treasury would not only help balance the budget but pay for a proposal I will suggest next to enhance the quality and experience of U.S. trade negotiators themselves.

Because inaction through the MOSS process is showing us that Japanese auto firms are not interested in fair trade, I suggest that we bar the use of foreign trade zones by Japanese automotive companies and, therefore, impose on their parts the duties normally associated with imported components. This would go a long way toward demonstrating the seriousness of the situation and our resolve not to be Mickey Mouse about this.

Further, much needed is a set of hearings on foreign trade zones, particularly their use and abuse by other nations, including special attention to auto parts. Until this time, I would suggest no further approvals of foreign trade zones until the equal access question is resolved with Japan on auto parts.

Third, moving on to a diplomatic trade corps, as you know, at any one time there are literally hundreds of trade negotiations taking place in which our Government is involved. Many of these can continue for several years, such as the GATT rounds which can take up to 10 years. With such lucrative opportunities being presented to our negotiators to leave the government to lobby or consult for huge fees, it is very easy to attract trade negotiators, but very difficult to keep them in Government service. This presents our Government with little institutional memory or committed talent regarding trade negotiations.

I have seen the results of these first hand during autoparts negotiations. It does not serve us well in multiyear talks because the faces and expertise of negotiators on our side of the table keep changing. Just in my brief tenure in Congress, I have seen our trade negotiators come and go. Many have their hearts in the right place but are very inexperienced, and their tenure or service is very short.

Therefore, I propose that we develop a highly paid U.S. corps of trade negotiators that would make a professional commitment to serve this nation and our Government beginning with an initial period of at least 6 years, with opportunities for signing on for additional hitches as experience and achievement demonstrate, as in the military or foreign service.

In return, this special Diplomatic Trade Corps would be ensured this attractive employment as administrations go through transitional periods. This would allow us to maintain a comprehensive, bipartisan trade policy that will function in the best interests of the country. These negotiators would also agree to not work for any foreign country or organization for a lengthy period, perhaps 10 years, after their retirement from this diplomatic corps for trade. This could be organized and maintained through the Interagency Trade Organization proposed in section 161 of H.R. 3. It is absolutely essential that we employ only Americans with the highest sense of integrity, training and commitment to represent our Government with a consistent, durable trade policy. It is clear that we have a revolving door in our trade sector.

Before this can be developed, however, we must face a growing trend that brings many of our present negotiators' motivations into question.

I would like to draw your attention to the intense lobbying efforts by foreign governments and foreign economic interests in Washington are a growing impediment to maintaining the integrity of U.S. trade policymaking. These lobbying efforts are often successful because foreign interests are hiring as their agents former top-level U.S. Government officials who have access to special information and contacts among those who implement America's trade, economic, defense and foreign policies. In fact, often when trade experts testify before Congress, they don't even identify who they are presently working for.

To attack this problem, Howard Wolpe and I introduced the Foreign Agents Compulsory Ethics in Trade Act (FACE IT) last year, along with over 120 cosponsors, and just introduced it in the 100th Congress last week.

Our purpose is simple: to ensure the effectiveness and integrity of our national institutions by prohibiting any former to-level U.S. official from representing or advising a foreign principal in any transaction with the U.S. Government for 4 years after leaving Government service. It is simply unethical for people to leave the Government, after having prepared cases in the trade area, and go directly to work on behalf of the very foreign interests they adjudicated when in the government of the United States, and on the average of $300,000 a year per client. This practice must be stopped, and I would encourage this committee to move this legislation as an addition to the omnibus trade bill.

Third, I would like to call your attention to the Trade Data Bank. Japanese Prime Minister Nakasone announced in 1985 that Japanese firms would purchase $7.3 billion worth of U.S. merchandise by the end of April 1986, which would have been only a small increase over the previous year's total. The statement did perhaps help ease some trade relations between our nations. Nevertheless, that is all that happened. For all we know, they purchased even less than they had the year before. We did not monitor it. We are not monitoring it today.

Last year I introduced a bill, which has been included in the Senate trade bill, to establish a trade data bank to ensure that the United States develops, over the next several years, adequate data gathering procedures and resources to provide the necessary backup to the effort that will be necessary in trade policymaking in the United States in the 1990s. An established interagency committee would maintain a central trade data bank to gather economic and trade information on each foreign country regarding general economic conditions and demographics, common business practices, tariffs and trade practices, as well as information on specific industrial and service sectors. This information, as well as all import-export data already gathered, would be disseminated in a timely manner to American businesses and organizations as needed. This could have helped us a lot in those auto negotiations going on over the last year.

Finally, I would like to comment on a mandatory retaliation of unfair trade practices. Section 301 of the Trade Act provides that our companies can be protected against unfair trade practices. It allows retaliation for such practices, and this is all in concert with our GATT agreements. It is absurd that our Chief Executive can select which industries he feels are more important to the economy by not granting relief to those industries being hurt by unfair competition. In unfair trade cases, those being injured must be compensated.

I strongly support the proposal found in the Senate omnibus trade bill that requires that all unfair trade practices recorded in the annual report to Congress be given a time limit for negotiation, and if no agreements are made and the practice still exists, the USTR must self initiate a 301 investigation. If the finding is positive that the practice does exist, the President must retaliate. This does not tie the President's hands, it only impels him to use them.

Mr. Chairman, I truly appreciate your time today, and that of the committee members today, as well as your concern for American industries. It is only through demanding market access that we will ever achieve it. As we develop this legislation, let us not forget that our first responsibility is to building better opportunities for Americans.

I would be glad to answer any questions that you may have. I want to thank you for your personal leadership, intelligence and hard work on this matter and your willingness to try to help us on these trade negotiations on auto parts with Japan. I couldn't have asked for better cooperation from your committee, from your entire staff, and we are most grateful for it.

Chairman GIBBONS. Thank you. As usual, your testimony shows that you are extremely well informed on the problem and put forth some very innovative solutions to some of our problems. I have long noticed that in trade negotiations, particularly with the European Community, we often deal with negotiators who have been there for years and who know not only their subject matter well but the history of past negotiations and what has been given up and what has not been given up, what the possibilities are and what the equities are. We often have brand new people, eager, but relatively uninformed as far as those negotiators are concerned.

You have also pointed to the area of the foreign trade zones, and frankly these have been allowed to grow all out of reason as to what was originally intended in the foreign trade zone legislation. I have wanted to have some hearings on this subject matter for some time, but we have had such a busy time up here putting out fires that we haven't been able to get to the foreign trade zones. I think they are on fire now. Perhaps we ought to get to them, we will certainly try to.

Third, I have enjoyed participating with you and Mr. Levin and others in monitoring the MOSS talks on autoparts. In my own mind, I have set this as one of the highest priorities that we have with the Japanese. Because if we can't make headway in this area where they have such a huge imbalance in trade on a product basis, then I frankly don't think we can make progress in anything except areas that are just unimportant to the United States.

And I have, as you know, let the Japanese negotiators know that, I have said it publicly a number of times, I continue to keep pushing on that. And hopefully we are going to make some progress in this. I look forward, realize they just completed a negotiation last night, and I am not briefed on that. I read your views of it and look forward to continuing working with you and your colleagues on that.

Mr. **Jenkins**. I want to thank you for your persistence in this area. You have been a great trooper and I congratulate you for your statement and for your continued work. I shall help you as much as I can.

Ms. **Kaptur**. And I thank you, Congressman Jenkins. You have been a real friend and hard worker for us. I appreciate it.

Mr. **Pease**. Mr. Chairman, I too would like to thank our colleague and my distinguished colleague from Ohio. Marcy, this testimony of yours just shows us once again the thoughtful work you are doing in this area. I am particularly indebted to you for looking into and making suggestions regarding foreign trade zones. I think that has been sort of a mysterious area for a lot of people. Not many have known how they operate and how the character of them has changed over the years, and I think you make a real contribution in your testimony by highlighting just what changes have occurred.

Thank you very much.

Ms. **Kaptur**. Thank you very much, Congressman Pease.

Chairman **Gibbons**. Sander.

Mr. **Levin**. Thank you, Mr. Chairman.

Welcome. We are usually on the same side of the table, and it is a pleasure for this once to be not on different sides, not opposite sides, the same side but in a different location.

Your testimony I think reflects the way you have approached these trade issues all along. Thoughtful, as mentioned by our colleague and compatriot, Mr. Jenkins, but also with the sense of urgency and really a sense of outrage at our present circumstance.

You mentioned the interim report and asked that it be placed in the record. You and I have just had a few moments to look at this interim report. My initial reaction was, last night, that it represented some progress, but it also shows how far we have to go, that it is a necessary step but very insufficient. The interim report states that the JAMA, Japanese Automobile Manufacturers Association, is going to be working with the Ministry of International Trade and industries in Japan on a system so that at least we have some knowledge of what is going on, what kind of sales there will be. There appears to be a commitment to break this down.

As of a few days ago, it appeared that our Government might settle for a lump sum, but now it is clear there will be a breakout of information, and we will know not only how much, if anything, was purchased for use in Japan, but also for use in automobile manufacturers' facilities here, and that there will be a reasonable number of categories. So that is some progress, I think you and I, would agree, over a few days ago where it appeared all we would get is a lump sum, which would say very very little. So we will look hard at this.

I think this report shows a few people can make some difference. We have many, many miles to go, and I would like to point out, Mr. Chairman, and to my colleagues, the last part of the statement of this interim report, on page 7, where it says the important tests of our accomplishments include a significant increase in sales by U.S. autoparts companies to Japanese vehicle companies and the initiation of long-term sourcing relationships between U.S. part companies and Japanese vehicle companies.

This paragraph covers the gist, the heart of the issue in this trade bill, and that is whether we are going to settle for process or insist on results being built in as the true test of any trade bill, with requirements for action by us if tests aren't met.

Perhaps you would like to comment on this—because we have talked a lot about benchmarks with our own administration, as well as the Japanese—your view on the critical importance of not only some kind of measuring rod but some kind of requirement of action if the measuring rod, if the measure isn't met.

Ms. **Kaptur**. Congressman Levin, thank you very much for asking that question, and, of course, this was my first recommendation in the testimony—to work with the members of the committee to draft a section to add to the bill, similar to the telecommunications section that was added in last year's bill, that would set benchmarks and retaliatory measures if in fact progress was not made. There is about a $25 billion market share that Japanese firms now have of the U.S. market, and purchase less than $100 million, less than 2 percent of American parts in that assembly.

One of my concerns, as we have watched these trade talks progress, is that rather than dealing with systemic stage, the approach of many of the firms seems to be rather palliative, we will satisfy them over the short term, and every single company in my district that has tried to gain access during the course of these talks feels that if it were not for the trade talks they would not even have been allowed to bid.

I was at lunch the other day in Toledo where I said to this one company, which is making a bid to supply for the first time into one of the major transplants here in the United States, I said, "When did you start this whole process?" And his reply was, "In September." There was an ad in the Wall Street Journal. Our talks started in August. Several of my own companies came to me last evening who have been advising the U.S. negotiators and said, "Marcy, without these talks we would have absolutely no access." If you read the actual results of the midterm review, they make specific references to foreign spark plugs. It is the only sector out of the thousands, 22,000 autoparts in a given car, they pick out spark plugs.

I am fully convinced that is because when we went to Japan in July 1985, I personally handed out spark plugs made in my district to everyone, from the Prime Minister on down. So I am concerned that the changes that they will seek will not be systemic in nature, but to "satisfy her with two companies in her district and give her a little," and Mr. Levin with a few, but we won't be talking about equal access for a broad range of companies in this country.

I would hope we would be able to work with the members of the committee and try to find a way to be fair but still to set some benchmarks, and if they are not met, to take stronger actions.

Mr. **Levin**. The red light is on, so let me close by adding my hope to that of Marcy in appreciation for your reaction, as well as your help all along on foreign trade. What has happened is we have been so swamped with auto imports that state and local communities have been scrambling to see if they can attract a company to assemble there, even though 70 percent of the material content that goes into the car assembled there will come from Japan.

That is really what has been happening. We have allowed a policy of divide and conquer, having each of these communities and states fighting for really the crumbs in terms of automobile production, so that we have lost sight of the critical issue, and that is whether we are going to maintain and sustain a basic American automobile manufacturing industry. So I would hope we could have an inquiry into the foreign trade zones in the near future.

Thank you very much, Mr. Chairman.

Mr. ANDREWS. I have no questions. I want to congratulate Marcy Kaptur for the contribution she has made to this committee, not just in this Congress, but since our election in 1982. I look forward to working with you on this trade bill.

Ms. KAPTUR. Thank you very much, Mr. Chairman, and members of the committee.

Chairman GIBBONS. Now our colleague from California, Mr. Konnyu.

STATEMENT OF HON. ERNEST L. KONNYU, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. KONNYU. Good morning.

Chairman GIBBONS. We are glad to have you here.

Mr. KONNYU. Thank you very much.

Mr. Chairman, my testimony is on file here. For the sake of time, to help you out and the members out, I would like to proceed to the second sheet of my testimony, down to the third to the last paragraph and begin there.

Chairman GIBBONS. We will put your entire statement in the record.

Mr. KONNYU. Thank you, Mr. Chairman.

The Republican leader, Bob Michel, asked me to be one of 12 Members of our party to work toward a bipartisan trade bill. It is my greatest desire that we succeed.

I am pretty optimistic about that, as the task force of Republicans wants a tough package as much as Democrats do. Time and time again members of the Republican Task Force say, "We have got to have a bill with teeth in it." And I agree.

I must mention, however, there is a difference between a tough trade bill and, as the President of a large union put it, "working toward the type of bill that almost insures a veto." That kind of effort and that kind of rhetoric will get America no where on the road to trade surplus.

But a determination on the part of members of this committee and other committees to work with each other across party lines and the White House will accomplish a great deal.

In fact, I think there is a lot of consensus out there to build on. I am grateful to the Speaker and the authors of H.R. 3 for initiating this debate and for bringing the White House into the thick of things. I, for one, support many of the provisions in H.R. 3.

First, California spends 55 percent of its budget on education. The citizens of my State know the value of education, and I am glad H.R. 3 addresses that issue. How anybody can think this nation can compete in the long run without leading in education is beyond me.

Second, the authors of H.R. 3 show support for Job Training Partnership Act. So do I. That is an area the administration and I disagree. It is a good government program that has a realistic approach to solving the problems of dislocation. As a former State legislator, I know this program really works at the grassroots.

Third, H.R. 3 says that other people aren't going to steal our property rights any more. I hope that section of the bill, section 142, will be even tougher by including Mr. Moorhead's language to say a U.S. industry should not have to show injury. Mr. Moorhead's H.R. 379 asks the correct question, "What does it matter if a violation of property rights injures a domestic concern?" A violation is a violation.

Fourth, and most important, are those sections in H.R. 3 dealing with unfair trade practices. It is unfortunate that it is not sufficient to have bilateral agreements like the antidumping agreement the Japanese signed last fall with respect to semiconductors from my Silicon Valley. They signed the agreement, 301 cases were dropped, and then they violated the agreement.

Because of this, the United States has to toughen our antidumping and countervailing duty laws. I support most of what H.R. 3 does in this area. I hope the committee will go further. I hope there will be tough multiple offender language. My suggestions are:

First, repeat offenders should be subject to dumping duties for the entire period of violation.

Second, we should require Government monitoring of companies that are found guilty three times of dumping within the same product area over a 5-year span.

Third, duties collected should go to affected workers.

Fourth, if changes in GATT are needed for this, Congress should instruct our negotiators to get those changes in Uruguay.

Fifth, any suspension of cases like the suspension of the Japanese got last summer from a 301 case should be considered one of their three violations.

The authors were wise to broaden the definition of what constitutes a government subsidy and to look at downstream and diversionary dumping.

I hope there is room to compromise on the transfer of authority from the President to the U.S. Trade Representative under 201 and 301. The USTR does not weigh all the factors, and he is not an elected official. The consumer, ongoing negotiations, national interest and fear of retaliation must be considered. Only the President has the ability to do this. The criteria by which the President can deny action found in section 112 of H.R. 3 are not sufficient.

Also mandatory quotas for countries with "excessive and unwarranted" trade surpluses are not in the Senate bill or the White House bill and probably won't find support among House Republicans. I hope this can be deleted as I believe the passage of a strong bipartisan trade bill, accompanied by other legislation this year to help business compete better, will lead to U.S. trade surpluses.

Not if that happens, but when that happens, are we going to unilaterally work down our surpluses as we are now suggesting others should do? I hope not.

Although Ways and Means does not have primary jurisdiction over export license controls, I do want to go on record saying H.R. 3 makes great strides in this area. I hope Members will agree to include some of the AuCoin/Frenzel language of H.R. 1141 in the bill.

As most of you know, a recent Government study shows a loss of $9 billion a year and 200,000 jobs due to a horrendous export licensing process. We could eliminate five percent of the trade deficit right there.

Also, "foreign availability" must be more broadly defined. For instance, the United States has a policy which says U.S. companies cannot take items to trade shows in the PRC which they are not allowed to sell in the PRC. It sounds reasonable except every other COCOM country has a different interpretation and their companies are allowed to show whatever they want. The reason that is important, what is not allowed to be exported today, tomorrow you are going to export to PRC.

When those products eventually become available to the PRC, guess who is going to get the business? It is not going to be the United States.

Again, Mr. Chairman, than you for this opportunity. I think we all agree if Congress puts up a united front, we can make the world believe this time we are serious. If we go about this in a divided fashion, we will solve nothing. I look forward to voting in the affirmative for a strong, bipartisan trade and competitiveness package.

[The statement of Congressman Konnyu follows:]

STATEMENT OF
THE HONORABLE ERNIE KONNYU
TO THE SUBCOMMITTEE ON TRADE
HOUSE COMMITTEE ON WAYS AND MEANS
FEBRUARY 27, 1987

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. IT IS A SPECIAL HONOR TO BE HERE AS A FRESHMAN TODAY, AND I APPRECIATE YOU TAKING THE TIME TO LISTEN TO MY VIEWS ON TRADE AND COMPETITIVENESS.

AS AN IMMIGRANT, AND HAVING GONE THROUGH THE EXPERIENCES I'VE GONE THROUGH, I'VE LEARNED TO BE AN ETERNAL OPTIMIST. I AM, HOWEVER, SOMEWHAT LESS OPTIMISTIC WHEN I THINK OF WHAT A TRADE BILL WILL DO TO SOLVE THE PROBLEMS OUR DOMESTIC INDUSTRIES FACE.

FOR I BELIEVE A TRADE BILL CANNOT SOLVE THE TWO MOST ONEROUS PROBLEMS WHICH KEEP US FROM BALANCED OR SURPLUS TRADE, THE BUDGET DEFICIT AND THE SABETSU, WHICH I WILL DEFINE SHORTLY.

ENOUGH HAS BEEN SAID ON THE BUDGET DEFICIT BUT I THINK I CAN SUM UP IT'S EFFECTS IN A QUOTE FROM THE CHAIRMAN OF A HIGH-TECH FIRM IN MY STATE. HE SAID, " WITH A NET COST OF CAPITAL OF THREE PERCENT IN IRELAND IT WOULD BE BAD BUSINESS NOT TO RELOCATE." THE COST OF CAPITAL IN JAPAN CAN BE AS LITTLE AS ONE HALF WHAT IT IS IN THIS COUNTRY.

MEMBERS OF THE COMMITTEE, NO MATTER WHAT GOES INTO A TRADE BILL, AMERICAN COMPANIES CANNOT COMPETE WITH FOREIGN COMPANIES PAYING LESS THAN HALF OUR COST OF CAPITAL. AND OUR COST OF CAPITAL IS HIGH BECAUSE OF THE BUDGET DEFICIT.

TO TELL THE AMERICAN PEOPLE, AND MORE IMPORTANTLY THE AMERICAN WORKER, THAT A TRADE BILL, ABSENT DRACONIAN MEASURES ON THE BUDGET DEFICIT, WILL BRING BACK JOBS TO AMERICA IS SIMPLY TELLING LESS THAN THE TRUTH. THE ECONOMIST MAGAZINE SAYS, "THE TRADE DEFICIT IS DIRECTLY LINKED TO THE HUGE BUDGET DEFICIT: IT IS MORE A PRODUCT OF SLOW-MOVING POLITICS THAN OF AN UNCOMPETITIVE ECONOMY."

THE SECOND ITEM I MENTIONED WHICH I AM NOT SURE A TRADE BILL CAN SOLVE IS WHAT THE JAPANESE CALL SABETSU. EVEN IF CONGRESS PASSES A VERY STRONG TRADE BILL SOON, AND I SUPPORT THAT, IT STILL WON'T DO MUCH TO BREAK UP THE JAPANESE TRADITIONS OF BUYING WITHIN GROUPS OF COMPANIES.

IN FACT, AT A RECENT BREAKFAST I ASKED KEY MEMBERS OF THE SEMICONDUCTOR EQUIPMENT AND MANUFACTURING INDUSTRY IF THEY GOT R&D CREDITS, ANTI-TRUST RELIEF, A STREAMLINED EXPORT LICENSE PROCESS, STRONG ANTIDUMPING AND COUNTERVAILING DUTY LAWS AND INTELLECTUAL PROPERTY RIGHT CONTROLS WOULD IT HELP THEIR SITUATION IN THE WORLD MARKET?

THEIR REPLY, "NOT WITH JAPAN."

UNFORTUNATELY THERE ARE OTHER MAJOR CONTRIBUTORS TO HUGE TRADE DEFICITS THAT A TRADE BILL CANNOT INFLUENCE. SECRETARY OF COMMERCE MALCOLM BALDRIGE SAID, IN MANY INSTANCES "THE LOSS CANNOT BE BLAMED ON A STRONG DOLLAR OR UNFAIR TRADING PRACTICES OR CLOSED FOREIGN MARKETS. WE WERE SIMPLY OUT MANAGED."

CAN A TRADE BILL CHANGE THIS?

WILL A TRADE BILL CHANGE THE ANTI-BUSINESS TUNE OF CONGRESS? LATER THIS YEAR WHEN MEMBERS VOTE ON REGULATIONS BURDENSOME TO BUSINESS LIKE THE PARENTAL AND MEDICAL LEAVE ACT OF 1987 AND PLANT CLOSING NOTIFICATION WILL PRO-TRADE MEMBERS GO TO THE FLOOR AND SAY, "THIS REALLY HAMPERS ALL THOSE BUSINESSES WE TRIED TO MAKE COMPETITIVE WHEN WE PASSED THE TRADE BILL." OR WILL THE COMPETITIVENESS THEME BE OLD HAT AFTER THE BILL PASSES?

ALSO, A TRADE BILL DOES NOT ADDRESS TAX QUESTIUONS SUCH AS THE EXPORT SOURCE RULE WHICH IF ALL INCOME IS TREATED AS DOMESTIC INSTEAD OF 50%FOREIGN/50%DOMESTIC, R&D WILL GO OVERSEAS AND MANUFACTURING WILL NOT BE FAR BEHIND. THIS IS THE KIND OF THING THAT MAKES FOR TRADE DEFICITS.

THE FINAL POINT I WOULD LIKE TO MAKE AS TO WHY CONGRESS NEEDS MORE THAN JUST A TRADE BILL IS A TRADE BILL DOES NOT SPEAK FOR CONSUMERS.

IF AMERICANS WERE ORDERED TO STOP BUYING CHEAPER AND BETTER FOREIGN GOODS IN ACCORDANCE WITH ALL PUBLISHED PROTECTIONIST PLEAS, REPUTABLE ECONOMISTS CALCULATE THAT WOULD CUT AMERICAN'S REAL INCOMES BY TWENTY PERCENT. THIS DOES NOT EVEN MENTION A POSSIBLE REBIRTH OF INFLATION.

LOWERING REAL INCOMES AND REKINDLING INFLATION IS THE BEST WAY TO CUT OFF THE CURRENT EXPANSION AND HAMPER THE AMERICAN CONSUMER.

SO, AS I HAVE POINTED OUT, THE RIGHT TRADE BILL IS NECESSARY TO MAKE AMERICA COMPETITIVE AGAIN. BUT NO TRADE BILL BY ITSELF IS SUFFICIENT TO MAKE AMERICA COMPETITIVE AGAIN. TO DO THIS WILL TAKE A LONG-TERM COMMITMENT FROM ALL MEMBERS TO BE MORE MINDFUL OF WHAT BUSINESS NEEDS FROM CONGRESS TO COMPETE IN THE WORLD MARKETPLACE.

THE REPUBLICAN LEADER, BOB MICHEL, ASKED ME TO BE ONE OF TWELVE MEMBERS OF OUR PARTY TO WORK TOWARD A BIPARTISAN TRADE BILL. IT IS MY GREATEST DESIRE THAT WE SUCCEED.

I AM PRETTY OPTIMISTIC ABOUT THAT, AS THE TASK FORCE OF REPUBLICANS WANTS A TOUGH PACKAGE AS MUCH AS DEMOCRATS DO. TIME AND TIME AGAIN MEMBERS OF THE REPUBLICAN TASK FORCE SAY, "WE'VE GOT TO HAVE A BILL WITH TEETH IN IT." AND I AGREE.

I MUST MENTION, HOWEVER, THERE IS A DIFFERENCE BETWEEN A TOUGH TRADE BILL AND, AS THE PRESIDENT OF A LARGE UNION PUT IT, "WORKING TOWARDS THE TYPE OF BILL THAT ALMOST INSURES A VETO." THAT KIND OF EFFORT AND THAT KIND OF RHETORIC WILL GET AMERICA NO WHERE ON THE ROAD TO TRADE SURPLUS.

BUT A DETERMINATION ON THE PART OF MEMBERS OF THIS COMMITTEE AND OTHER COMMITTEES TO WORK WITH EACH OTHER ACROSS PARTY LINES AND THE WHITE HOUSE WILL ACCOMPLISH A GREAT DEAL.

IN FACT, I THINK THERE IS A LOT OF CONSENSUS OUT THERE TO BUILD ON. I AM GRATEFUL TO THE SPEAKER AND THE AUTHORS OF HR THREE FOR INITIATING THIS DEBATE AND BRINGING THE WHITE HOUSE INTO THE THICK OF THINGS. I, FOR ONE, SUPPORT MANY OF THE PROVISIONS IN HR THREE.

FIRST, CALIFORNIA SPENDS FIFTY-FIVE PERCENT OF ITS BUDGET ON EDUCATION. THE CITIZENS OF MY STATE KNOW THE VALUE OF EDUCATION AND I AM GLAD HR THREE ADDRESSES THAT ISSUE. HOW ANYBODY CAN THINK THIS NATION CAN COMPETE IN THE LONG RUN WITHOUT ASSISTANCE TO EDUCATION IS BEYOND ME.

SECOND, THE AUTHORS OF H.R. THREE SHOW SUPPORT FOR JOB TRAINING PARTNERSHIP ACT. SO DO I. IT IS A GOOD GOVERNMENT PROGRAM THAT HAS A REALISTIC APPROACH TO SOLVING THE PROBLEMS OF DISLOCATION. AS A FORMER STATE LEGISLATOR I KNOW THIS PROGRAM REALLY WORKS AT THE GRASS ROOTS.

THIRD, H.R. THREE SAYS THAT OTHER PEOPLE AREN'T GOING TO STEAL OUR PROPERTY RIGHTS ANYMORE. I HOPE THAT SECTION OF THE BILL, SECTION 142 WILL BE EVEN TOUGHER BY INCLUDING MR. MOOREHEAD'S LANGUAGE TO SAY A U.S. INDUSTRY SHOULD NOT HAVE TO SHOW INJURY. MR. MOOREHEAD'S H.R. THREE SEVENTY NINE ASKS THE CORRECT QUESTION, "WHAT DOES IT MATTER IF A VIOLATION OF PROPERTY RIGHTS INJURES A DOMESTIC CONCERN?" A VIOLATION IS A VIOLATION.

FOURTH, AND MOST IMPORTANT, ARE THOSE SECTIONS IN H.R. THREE DEALING WITH UNFAIR TRADE PRACTICES. IT IS UNFORTUNATE THAT IT IS NOT SUFFICIENT TO HAVE BILATERAL AGREEMENTS LIKE THE ANTIDUMPING AGREEMENT THE JAPANESE SIGNED LAST FALL WITH RESPECT TO SEMICONDUCTORS. THEY SIGNED THE AGREEMENT, 301 CASES WERE DROPPED AND THEN THEY VIOLATED THE AGREEMENT.

BECAUSE OF THIS THE U.S. HAS TO TOUGHEN OUR ANTIDUMPING AND COUNTERVAILING DUTY LAWS. I SUPPORT MOST OF WHAT H.R. THREE DOES IN THIS AREA. I HOPE THE COMMITTEE WILL GO FURTHER. I HOPE THERE WILL BE TOUGH MULTIPLE OFFENDER LANGUAGE. MY SUGGESTIONS ARE:

REPEAT OFFENDERS SHOULD BE SUBJECT TO DUMPING DUTIES FOR THE ENTIRE PERIOD OF VIOLATION.

WE SHOULD REQUIRE GOVERNMENT MONITORING OF COMPANIES THAT ARE FOUND GUILTY THREE TIMES OF DUMPING WITHIN THE SAME PRODUCT AREA OVER A FIVE YEAR SPAN.

DUTIES COLLECTED SHOULD GO TO AFFECTED WORKERS

IF CHANGES IN GATT ARE NEEDED FOR THIS CONGRESS SHOULD INSTRUCT OUR NEGOTIATORS TO GET THOSE CHANGES IN URUGUAY.

ANY SUSPENSION OF CASES LIKE THE SUSPENSION THE JAPANESE GOT LAST SUMMER FROM A 301 CASE SHOULD BE CONSIDERED ONE OF THEIR THREE VIOLATIONS.

THE AUTHORS WERE WISE TO BROADEN THE DEFINITION OF WHAT CONSTITUTES A GOVERNMENT SUBSIDY AND TO LOOK AT DOWNSTREAM AND DIVERSIONARY DUMPING.

I HOPE THERE IS ROOM TO COMPROMISE ON THE TRANSFER OF AUTHORITY FROM THE PRESIDENT TO THE UNITE STATES TRADE REPRESENTATIVE UNDER 201 AND 301. THE USTR DOES NOT WEIGH ALL THE FACTORS AND HE IS NOT AN ELECTED OFFICIAL. THE CONSUMER, ON-GOING NEGOTIATIONS, NATIONAL INTEREST AND FEAR OF RETALIATION MUST BE CONSIDERED. ONLY THE PRESIDENT HAS THE ABILITY TO DO THIS. THE CRITERIA BY WHICH THE PRESIDENT CAN DENY ACTION FOUND IN SECTION 112 OF H.R. THREE ARE NOT SUFFICIENT.

ALSO, MANDATORY QUOTAS FOR COUNTRIES WITH "EXCESSIVE AND UNWARRANTED" TRADE SURPLUSES ARE NOT IN THE SENATE BILL OR THE WHITE HOUSE BILL AND PROBABLY WON'T FIND SUPPORT AMONG HOUSE REPUBLICANS. I HOPE THIS CAN BE DELETED AS I BELIEVE THE PASSAGE OF A STRONG BIPARTISAN TRADE BILL ACCOMPANIED BY OTHER LEGISLATION THIS YEAR TO HELP BUSINESS COMPETE BETTER WILL LEAD TO U.S. TRADE SURPLUSES.

NOT IF THAT HAPPEN BUT WHEN THAT HAPPENS ARE WE GOING TO UNILATERALLY WORK DOWN OUR SURPLUSES AS WE ARE NOW SUGGESTING OTHERS SHOULD DO?

I HOPE NOT.

ALTHOUGH WAYS AND MEANS DOES NOT HAVE PRIMARY JURISDICTION OVER EXPORT LICENSE CONTROLS I DO WANT TO GO ON RECORD SAYING H.R. THREE MAKES GREAT STRIDES IN THIS AREA. I HOPE MEMBERS WILL AGREE TO INCLUDE SOME OF THE AU COIN/FRENZEL LANGUAGE OF HR ELEVEN FORTY ONE IN THE BILL.

AS MOST OF YOU KNOW, A RECENT GOVERNMENT STUDY SHOWS A LOSS OF $9 BILLION A YEAR AND 200,000 JOBS DUE TO A HORRENDOUS EXPORT LICENSING PROCESS. WE COULD ELIMINATE FIVE PERCENT OF THE TRADE DEFICIT RIGHT THERE.

ALSO, "FOREIGN AVAILABILITY" MUST BE MORE BROADLY DEFINED. FOR INSTANCE, THE U.S. HAS A POLICY WHICH SAYS U.S. COMPANIES CANNOT TAKE ITEMS TO TRADE SHOWS IN THE PRC WHICH THEY ARE NOT ALLOWED TO SELL TO THE PRC. IT SOUNDS REASONABLE EXCEPT EVERY OTHER COCOM COUNTRY HAS A DIFFERENT INTERPRETATION AND THEIR COMPANIES ARE ALLOWED TO SHOW WHATEVER THEY WANT.

WHEN THOSE PRODUCTS EVENTUALLY BECOME AVAILABLE TO THE PRC GUESS WHO'S GOING TO GET THE BUSINESS?

AGAIN, MR. CHAIRMAN, THANK YOU FOR THIS OPPORTUNITY. I THINK WE ALL AGREE IF CONGRESS PUTS UP A UNITED FRONT WE CAN MAKE THE WORLD BELIEVE THIS TIME WE'RE SERIOUS. IF WE GO ABOUT THIS IN A DIVIDED FASHION WE WILL SOLVE NOTHING. I LOOK FORWARD TO VOTING IN THE AFFIRMATIVE FOR A STRONG, BIPARTISAN TRADE AND COMPETITIVENESS PACKAGE.

Chairman GIBBONS. You have my word I will do the best I can to get a bipartisan package out of here. It is sometimes possible. If I get it too bipartisan, I elude my Democratic colleagues; if I don't get it bipartisan enough, I elude my Republican colleagues. It is a narrow road, but one I will try to traverse the best I can. I hope with all members cooperating, we can do that.

We obviously cannot solve every problem on earth in one trade bill. We will do our best to make it reasonably broad and include everything, but I appreciate your coming and taking your time. You made some real good suggestions here. I will give them serious consideration.

Mr. KONNYU. Thank you, Mr. Chairman.

Mr. JENKINS. Thank you, Ernie, for your testimony.

Mr. LEVIN. I just welcome our colleague. Thank you very much.

Chairman GIBBONS. All right. We are now going to have an interesting panel consisting of the Institute for International Economics, C. Fred Bergsten; the Footwear Retailers of America, Peter Mangione; and Espirit de Corp., Doug Tompkins, and I guess we ought—just three on here.

I welcome you here. We have made some inquiries of Mr. Bergsten and others about how to better handle quota legislation. As you know, we are getting pressure from the Budget Committee about auctioning quotas, and I thought this would be an appropriate time. The Budget Committee estimates in a publication—excuse me, the CBO estimates in a publication released today that perfectly functioning quotas auctioned in this country would produce in 1988, $3.9 billion. I don't know whether that is a reasonable figure or not. We need to learn more about this subject.

Mr. Bergsten, we will go to you first.

STATEMENT OF C. FRED BERGSTEN, DIRECTOR, INSTITUTE FOR INTERNATIONAL ECONOMICS

Mr. BERGSTEN. Thank you very much, Mr. Chairman.

As you know, we have discussed before this committee several times a number of broad issues. Today I confine myself to the topic you raise here, the notion of changing the method by which the U.S. carries out its various quantitative restraints on imports. This is a topic we discussed before the committee a year ago when you were considering the 1986 legislation. You and your staff asked us to look at several aspects of the question, and we have done that, and today I basically want to report to you on some of our conclusions.

I want to first make very clear that I do not advocate trade controls. In general, I believe that open trade is the best policy, and so I am not proposing new trade restrictions. I further believe that when the United States uses import restraint, it is preferable to do it via tariffs. But in the real world, we all know that quantitative restrictions are often used to restrain trade.

Once a decision is made to use quantitative restrictions, the issue of how to administer them is extremely important. Quotas now limit U.S. imports in eight major sectors, and seven of those restraints, including the three largest, are administered wholly or largely by the exporting countries, not by the United States. More-

over, the two most important recent quota agreements which have now expired, color TVs and footwear, were also administered by the exporting countries. It is clear that the dominant pattern of administering so-called American quotas is to give them to the exporting country to divide up among their own firms.

That technique has two very important effects. First, it enables the exporters to seize the price premium, the so-called scarcity rents on the controlled product which derive from the artificial shortage created by the quota itself. Like any restriction on supply, the quota drives up the price of the product. When we give the quotas to the foreign country to administer, that enables them to seize that higher price. If the United States were to administer the quotas, most of the premium would remain here. Because we give our quotas away to the foreign countries, brokers in Hong Kong receive a quota which they have no intention of using themselves and resell them in hotel lobbies or in the open market there. Japanese auto companies sharply increase the prices of their exports to the United States and thereby augment their profits enormously, profits which they plow back into their own investment, enabling them to enhance their competitive position against our own producers.

The transfer of these benefits to the foreign countries, as a quid pro quo for the quantitative limits on their sales to us, is in fact the conscious, if usually concealed, rationale for allowing foreign countries to administer these quotas via their exporters under negotiated arrangements. The usual compensation measures of the GATT can be evaded. The negotiations can be negotiated privately outside the rules and outside the glare of publicity. There is little awareness of the transfer, and hence little criticism of the benefits provided to the foreign producers.

I would strongly question, however, the transfer of these pricing advantages to our major competitors abroad. Their profits are thereby augmented substantially. We, in fact, push them to cartelize these industries in order to maximize their benefits.

Considerable amounts of money are involved. By our calculation, foreign textile and apparel exporters are now garnering almost $4 billion annually by administering the quotas—I know the CBO has a slightly lower number, and I would be happy to address that later if you want. Foreign steel exporters have been gaining about $2 billion per year. Back in 1984, when the auto restraints were particularly binding, Japanese auto companies were reaping more than $2 billion a year by virtue of Japan's administering the quotas.

Our willingness to transfer these huge rewards to our major competitors abroad, Mr. Chairman, runs directly counter to the fundamental goal of the legislation before this committee; namely to enhance the competitiveness of American industry. From the standpoint of the Congress, I might add, the transfer of these rents might be viewed as unappropriated foreign aid, a process which you would hardly tolerate when you vote on foreign assistance explicitly, especially when some of it is going to the richest countries in the world.

A domestic equity question also arises. Why should we give away billions of dollars of trade rents when virtually all other economic benefits dispensed by government are auctioned or sold for user fees? When we dispense oil leases on the offshore continental shelf or logging rights in the national timberlands, we don't give them away to the private sector. We sell them. Even in the few cases where such benefits have heretofore been given away, such as landing rights at airports, user fees are now being proposed in order to charge the beneficiary for the gain he is getting from the Government. The free dispensation of billions of dollars under quotas is an anomaly and very peculiar and expensive.

A second serious drawback of the current system is that the transfer of these benefits to the foreign exporters, along with the assurance of market share which derives from the inherent country-by-country nature of giving them the quotas, generates strong vested interests in the exporting countries to maintain the quota regime. In essence, we create an international coalition for protection, including both the folks here domestically who want to have their volume of output protected and the people abroad who get this huge increase in their profits. It is no accident that many of these controls we are talking about, textiles, apparel, sugar and dairy, have been in existence for 15 to 50 years. Nor should we be surprised that many of the exporting countries quite willingly signed onto the new multifiber arrangement and that the European Community asked the United States to put on the so-called restraint arrangements in steel.

In essence, Mr. Chairman, the dominant method we now use to implement quantitative restrictions in this country has two pernicious effects. It gives billions of dollars of quota premiums to our chief competitors abroad and creates an alliance that tends to perpetuate the quotas themselves. In my view, both results run directly counter to the need to enhance the competitiveness of American industry. Taken together, they constitute an enormous indictment of the present regime and call for radical change.

With that as a backdrop, the radical change I would propose is that we start auctioning the quotas instead of giving them away to foreign suppliers. The auctions would render the protection much more transparent by revealing the size of the quota-induced price increases each time auctions took place, thereby generating some pressure against perpetual retention of the quotas. The auctions would avoid creating vested interests abroad in maintaining the protective regime. They would immediately shift those price premiums back to the U.S. Treasury, denying them to our competitors, and some of the revenue could be earmarked to assist the injured U.S. industry in adjusting to competition from abroad and permitting the protection itself to be phased down over a transition period.

The legislation now being considered in the Senate, as offered by Senators Bentsen and Danforth, would require American industries which seek import relief to demonstrate that over the period of the relief they could either restore their competitiveness or down-size to a level that could survive. I endorse that approach and hope it will be adopted here in the House as well.

Whether the industry is trying to achieve a new ability to compete at its current level or trying to down-size, there are three key requirements. You have to reduce the protection degressively over the life of the controls, you have to set a fixed date to terminate the controls, and you have to provide some Government assistance, as needed, to facilitate the adjustment and reduce its human costs to those involved.

The first two of those requirements, degressivity and eventual elimination, are included in section 201, but can be evaded by the use of these so-called voluntary restraint agreements, another reason to condemn that frequent practice. So I am suggesting there are three essential elements of a constructive adjustment program that would be consistent with the focus on improving American competitiveness in this year's trade legislation.

Those three domestic requirements mesh precisely with the international obligations which the United States would in all probability have to accept to win agreement abroad to shift the administration of our quota system from the foreigners, which is often explicit in negotiated arrangements with them, back to domestic auctioning. All of those arrangements have been codified in bilateral or multilateral agreements, so we cannot convert them unilaterally without running the risk of incurring significant costs—demands for new forms of compensation, risk of retaliation, possible new trade wars, and certainly severe disruption of the Uruguay round of trade negotiations.

However, the concerns of the exporting countries should be assuaged by the three considerations I have already recommended on domestic grounds: firm schedule for reducing protection over time, a termination date for the entire protective regime and, to make those requirements viable, dedication to positive industry adjustment of a substantial portion of the premiums transferred back to the United States by the auctions. Such a program would indicate to the exporters that their loss of rents would be offset by increased market access for exports over time.

To implement this approach, I would recommend that the Congress direct the administration in this legislation to do two things: first, to negotiate with our trading partners a conversion of most of the existing quotas to an auction system over the next couple of years, and second, to implement any new quantitative restrictions via auctioning, with the three considerations I mentioned applying to each case.

In the case of converting existing restraint agreements, the administration should bring them back to the Congress for approval under the fast-track procedures. This whole process, an international negotiation after a mandate and bringing it back for fast-track approval, would assure both the domestic industries and foreign suppliers of the overall package and, therefore, achievement of these objectives.

I would submit that such a program, once fully in place, would have a very attractive revenue feature in addition to the trade policy benefits that I have mentioned. On our estimates, which are higher than the CBO estimates, such a conversion could transfer about $7 billion in revenue to the U.S. Government—about $4 billion in textiles and apparel, $2 billion in steel, several hundred million dollars each for dairy products, machine tools, specialty steel, and sugar.

I think the most promising case for immediate action might be steel. Unlike the textile/apparel industry, the bulk of that industry has declared publicly that it needs to down-size substantially. It, therefore, meets the basic adjustment test of the proposed program and would presumably accept a phase-down and elimination of import protection over a period of years. The steel industry is, in fact, seeking Government financial help to accomplish its transition, including having Federal funding pick up the sizeable costs of the unfunded pensions of workers who would be laid off as the industry down-sizes. Our calculations suggest the United States can capture over $2 billion in annual rents from the steel quotas and thereby facilitate that conversion process.

We would suggest earmarking a total of about $1 billion of the total rents obtained from the quota auctions to finance the new program of worker retraining proposed by Secretary Brock and earmarking additional amounts to the industries in this process, including down-sizing the steel industry and adjustments in the textile industries to improve their competitive position. Since most or all of these costs would be borne by the Government, in any event, the bulk of the revenues would provide a net addition to budget receipts and decrease the deficit by a substantial amount.

I have made the positive case for moving to auctions. I would now like to address the arguments that have been made against an auction system. One is that it would increase consumer prices. That is simply incorrect. What increases consumer prices is the quota regime, and to be sure quotas do increase consumer prices. The method of implementing quotas is a matter of indifference from that standpoint and the shift would not raise consumer prices.

Second, it has been argued that quota auctioning would violate the GATT. That too is simply not true. The level of protection would not be raised. There are no GATT provisions that are violated. We go into that in detail in our study. I am happy to discuss it in detail if you wish.

The most frequent concerns have been expressed by importing and retailing industries, and I am sure you are going to hear it this morning. They fear that a shift to auctioning would be disruptive and even cause panic bidding and chaos. Those are words that we have heard from importers and retailers about the effects of this change.

I would fully acknowledge that any change in trading arrangements produces anxieties among those affected, including importers and retailers. I would suggest, however, that there are several ways to minimize or totally eliminate any such risk and would suggest three or four methods for doing that. Before doing so, I would note that importers and retailers should be among the major beneficiaries of this system because, in the move from allocated to auction quotas, you would be moving to a greater reliance on price mechanisms, you would be providing a way to phase down the restraints over time, and you would be moving away from country-by-country restraints to more global quotas, which would, of course, provide importers and retailers with a wider diversity and flexibility in sourcing imports even under the quota regime. I think they would benefit.

Given the fears, let me mention three or four ways to deal with them. First, a substantial share of the auction tickets could be offered on a first-refusal basis to current importers on the basis of their historical market shares. They would, of course, have to pay for the tickets but would be fully assured against being shut out of the market or, depending on the share provided on this basis, against any significant cutback, and they could, of course, bid for more in the auction itself.

Such an allocation would simultaneously protect against any one or several bidders cornering the market, another fear that has been expressed, by assuring that most importers would remain in the trade. One could start out by allocating 50 percent of the tickets on that basis, or one could start with a higher number, providing perhaps three-quarters of the tickets at the outset on the basis of historical share and phasing it down to 25 percent in the third year.

I think the experiences in Australia, New Zealand, and in other types of systems of this nature, which we have looked at in our study, show that there is some uncertainty at the transition. So one wants to provide maximum certainty at that time to minimize those concerns. But then, as people become familiar with the new approach, you can phase down the transition rules and move to a new steady state.

A second safeguard would be a small bidder setaside. Just as in Treasury security auctions, small bidders could get whatever they want off the top, at whatever price is set in the auction on the majority of the tickets.

Third, and critically important, an active secondary market in quota tickets should exist from the outset. Any American, including American agents of exporting companies and countries, would be eligible to bid for tickets. If some bidders wound up with excess tickets, they could sell them in the secondary market.

So I would recommend that those safeguards be included in any auction quota system, although I seriously doubt there would be very many adverse effects on retail trade once they became familiar with it.

The final major argument that is made against auction quotas is that they would require a large increase in administrative costs and bureaucratic involvement. That, I must say, is extremely dubious. The GAO, in its report of December, said: "We see no reason to expect any substantial difference between auctions and other means of administering QRs."

It is simply hard to imagine that an auction system would be more complicated than the current textile regime of negotiating over 100 categories with over 40 countries. In fact, I am not sure but what this might be labeled "trade simplification," at least if your tax bill of last year could be labeled "tax simplification."

The final point I would make is that if we are getting anything like $7 billion worth of revenues, or even the lower amount suggested by the CBO, then it would totally swamp the amount that would be caused by any increased administrative costs.

Mr. Chairman, in conclusion, I believe that a mandated shift to auction quotas as part of a package of reforms in U.S. trade policies and industry adjustment strategy could make an important positive contribution to enhancing American competitiveness, reducing the budget deficit, and improving U.S. and international trade policies.

Hence, it should be included in any trade bill that you are going to pass, with the following features:

First, any new quantitative restrictions adopted by the United States should be implemented through auction quotas.

Second, the administration should be directed to negotiate the rapid conversion of existing export restraint agreements, except in autos and meat, to auction quotas.

Third, all revenues generated by the auction quotas should be placed in the new adjustment assistance trust fund which you have already included in section 122 of H.R. 3. Those resources could then be used to finance adjustment assistance for all trade impacted industries. Any excess would become general revenues of the Treasury and reduce the budget deficit.

Fourth, all of these auction quotas would be progressively liberalized and eliminated over a fixed period of time, perhaps 5 years for new cases, as in present law, and, perhaps, over 10 to 15 years in existing cases, for example, textiles and apparel.

I should mention Mr. Chairman, on textiles and apparel, which I am sure will be the most contentious case in this context, that we have a study which suggests that if you phased out the quota protection for the textile and apparel industries over 15 years, the reduction in employment which would occur would be less than the average annual attrition rate of retirements and quits that the industry has experienced over the last 15 years. Therefore, a phaseout would not cause a burden, in terms of throwing people out on the street who otherwise would not already be retiring from the industry in any event.

Fifth, the auction quota should cover all restricted suppliers together, rather than being instituted on a country by country basis.

Finally, the administrative techniques for implementing the auctions should be designed to minimize market disruption by setting aside a substantial proportion for traditional suppliers, on the basis of historical market share, a small business setaside, and an active secondary market.

Thank you very much.

[The statement of Mr. Bergsten follows:]

AUCTION QUOTAS AND UNITED STATES TRADE POLICY: THE CASE FOR REFORM

Statement by

C. Fred Bergsten, Director
Institute for International Economics

before the

House Ways and Means Committee
Subcommittee on International Trade

February 27, 1987

Introduction

In response to the variety of questions concerning auction quotas which emerged from deliberations on the issue by this Subcommittee in early 1986, my Institute for International Economics has conducted a comprehensive study of the topic over the past year. That study, which will be published in the near future,[1] has four major analytical components:

- detailed analysis of the economics of auction quotas, in particular by comparison with other forms of quantitative trade restraints
- assessment of the practicality of the idea, including a thorough appraisal of the auction quota systems which have been operated by Australia and New Zealand since the early 1980s
- appraisal of the international implications of auctioning, with regard to both the GATT and the negotiated restraint arrangements which now exist in several key sectors (including textiles/apparel and steel)
- compilation of the practices of the US Government in dispensing economic benefits in a number of other policy areas, such as oil and other mineral leases and rights to cut timber, as possible guides to dispensing the benefits which accrue under quantitative restrictions on imports.

The overall conclusion of the study is that, as part of an integrated program of industry adjustment to trade dislocation, auctioning of quotas could make a substantial positive contribution to American trade policy. In addition, quota auctions could provide considerable revenues (perhaps $7 billion annually at present) to help reduce the budget deficit. Hence we recommend that the Congress adopt new provisions that would mandate the use of auction quotas, in certain circumstances, to promote the fundamental goal of the pending trade legislation to enhance the competitiveness of American industry.

The Costs of the Present System

I do not recommend that the United States increase its use of quantitative trade restraints. In most cases, I believe that American interests are served by avoiding controls on trade flows. When trade controls do become necessary, I believe that tariffs are usually the preferred technique for administering them.

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1. C. Fred Bergsten, Jeffrey J. Schott, Kimberly Ann Elliott and Wendy Takacs, Auction Quotas and United States Trade Policy, Washington: Institute for International Economics, forthcoming.

In the real world, however, there will be periodic resort to quantitative trade restrictions (QRs). Once a decision is made to use QRs, the issue of how to administer them is very important. There are basically four choices: the QRs can be administered by either the exporting or the importing country, either of which can in turn give the quotas away (usually allocating them on the basis of historical market shares) or sell them (usually via auction).

QRs now limit United States imports in eight major sectors. Seven of these restraints, including the three largest, are administered wholly or largely by the exporting countries: automobiles, carbon steel, machine tools, meat, specialty steel, sugar and textiles/apparel.[2] Moreover, the two most important recent QRs which have now expired were also administered by the exporting countries (color television sets and nonrubber footwear). Only dairy quotas are allocated by the United States itself. It is clear that the dominant pattern of administering "American" QRs is to give them to the exporting countries to divide up among their own firms.

This has two important effects. First, it enables the exporters to seize the price premium ("scarcity rent") on the controlled product which derives from the artificial shortage generated by the QR itself. If the United States were to administer the QRs, most of these premia would usually remain in the United States: with the importers if the quotas were allocated to them (as perhaps in dairy), with our Government if the quotas were auctioned (as is the case with offshore oil leases and timber rights).[3]

Because we usually give our quotas away to the exporting countries, brokers in Hong Kong receive apparel quota which they have no intention of using themselves--but instead sell to the highest bidders on the open market, on such a routine basis that local newspapers quote the "export premium" (which shows _inter alia_ how much more American consumers are paying for their apparel imports because of the quota system). Likewise, Japanese automobile companies were able to sharply increase the prices of their exports to the United States and thereby augment their profits enormously--profits which they promptly plowed back into new investment, enabling them to further enhance their competitive position vis-a-vis our own producers.

The transfer of these benefits to the foreign countries, as a _quid pro quo_ for the quantitative limits on their exports to us, is in fact the conscious (if usually concealed) rationale for allowing foreign countries to administer American QRs via their exporters under negotiated quota arrangements. The usual compensation requirements of the GATT can thereby be evaded, and retaliation is not threatened. The arrangements can be negotiated privately, outside the international trading rules and the glare of publicity. There is little awareness of the transfer and hence little criticism of the benefits provided to the foreign producers.

We strongly question, however, the transfer of these pricing advantages to our major competitors abroad. Their profits are

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2. These restraints take differing forms including "voluntary export restraints" (VERs), "voluntary restraint agreements" (VRAs), and "orderly marketing arrangements" (OMAs). I will ignore the technical and legal differences among them in this statement. The meat restraints are currently inoperative.

3. The only exception to this generalization occurs if the exporting or importing industries are highly concentrated. In such cases, industry concentration rather than country of administration may determine the distribution of the rents. In practice, however, we believe such cases to be infrequent.

thereby augmented substantially. We in fact push them to cartelize to maximize their benefits.

Considerable amounts of money are involved (Table 1). By our calculations, foreign textile and (mainly) apparel exporters are now garnering about $4 billion annually by administering the quotas. Foreign steel exporters are gaining about $2 billion annually. Japanese auto exporters were reaping more than $2 billion in 1984 when those quotas were most effective.

Our willingness to transfer these huge rewards to our major competitors abroad runs directly counter to the fundamental goal of the legislation before the committee, to enhance the competitiveness of American industry. From the standpoint of the Congress, the transfer of these rents should also be viewed as unappropriated foreign aid--a process which would hardly be tolerated when you vote on foreign assistance explicitly, especially as much of it goes to some of the richest countries in the world!

A domestic equity question also arises. Why should we give away billions of dollars of trade rents when virtually all other economic benefits dispensed by government are auctioned or sold for "user fees"? For example, oil leases and logging rights are auctioned. Even in the few cases where such benefits have heretofore been given away, such as landing rights at airports, user fees are now being proposed. The free dispensation of billions of dollars of benefits under import quotas is an anomaly.

A second serious drawback of the current system is that the transfer of these benefits to the foreign exporters, along with the assurance of market share which derives from the inherent country-by-country nature of giving them the QRs, generates strong vested interests to maintain the quota regime in the exporting countries as well as here at home--thus creating an international "coalition for protection." It is no accident that much of the textile/apparel restraint has now been in place for almost thirty years, the steel restraints for most of twenty years, and sugar controls for over fifty years. Nor should we be surprised that most of the exporting countries quite willingly, even eagerly, signed on to the latest extension of the Multi-Fiber Arrangement and that the European Community asked the United States to install the current import restrictions on steel!

In essence, the dominant method of applying QRs in this country has two pernicious effects: it gives billions of dollars of quota premiums to our chief competitors abroad, and it creates an unholy alliance between exporters and import-competing industries that tends to perpetuate the QRs themselves. Both results run directly counter to the need to enhance the competitiveness of American industry. Taken together, they constitute an enormous indictment of the present regime and call for radical change.

The Auction Quota Alternative

Auctioning the quotas, instead of giving them away to the exporting countries, could remedy the situation. The auctions would render the protection much more transparent to Americans, by revealing the size of the rents at each sale, thereby generating pressure against retaining the QRs. They would avoid creating vested interests abroad in maintaining the protective regime. They would of course immediately shift the price premia to the US Treasury, denying them to our competitors. Some of the revenues could then be earmarked to assist the protected industries adjust to competition from abroad, permitting the protection itself to be phased down and eliminated after a fixed transition period.

The legislation now being considered by the Senate Finance Committee, drafted by Senators Bentsen and Danforth, would require American industries which seek import relief to demonstrate that, over the maximum period of time permitted for such relief, they could either restore their competitiveness or downsize to a level which could survive without further trade protection. I strongly support this approach, and hope it will be adopted by the House as well.

Our own study of past adjustment efforts suggests that downsizing is the more likely outcome, as there are very few instances of "phoenix cases" in either this country or abroad.[4] But, in either event, there are three key requirements: providing a degressive schedule of protection over the life of the controls, setting a fixed date for their termination, and providing governmental assistance as needed to facilitate the adjustment and reduce its human costs to those involved. The first two of these requirements are of course already included in Section 201 of the Trade Act, but can be evaded by the use of "voluntary" export restraint arrangements--another reason to condemn this frequent practice.

This trilogy of domestic desiderata meshes precisely with the international obligations which the United States would, in all probability, have to accept to win international agreement to shift the administration of existing QRs from the exporting countries to domestic auctioning. As noted, given the existence of a QR regime, the exporters derive substantial benefits from the current system. All of these arrangements have been codified in bilateral or multilateral agreements. Hence the United States could not simply convert the existing QRs to auctions on a unilateral basis without incurring significant costs--demands for new forms of compensation, risks of retaliation and possible new trade wars, severe disruption of overall trade policy including the prospects for the Uruguay Round--which the United States has, rightly, worked so hard to move forward.

However, the concerns of the exporting countries should be assuaged by the three considerations already advocated above: a firm schedule for reducing the degree of protection over time, a firm termination date for the entire protective regime, and--to make these first two requirements viable--dedication to positive industry adjustment of a substantial portion of the export premiums transferred back to the United States via the auctions. Such a program would indicate credibly to the exporters that their loss of rents would be offset by increased market access for their exports. This would reverse the implicit bargain which underpins the present export restraint regimes, in a way that would be healthy (by phasing out the controls) for both our domestic economy and for international trade policy.

To implement such an approach, the Congress should direct the Administration (1) to negotiate with our trading partners a conversion of most of the existing QRs to auction quotas over the coming years, as well as (2) to implement any new QRs via auctioning,[5] with the three conditions cited above applying to

[4] Gary Clyde Hufbauer and Howard F. Rosen, Trade Policy for Troubled Industries, POLICY ANALYSES IN INTERNATIONAL ECONOMICS 15; and Gary Clyde Hufbauer, Diane T. Berliner, and Kimberly Ann Elliott, Trade Protection in the United States: 31 Case Studies, Washington: Institute for International Economics, 1986.

[5] One could, of course, simply mandate the use of auction quotas for new QRs imposed under Section 201. Such an approach will reportedly be proposed by Senator Baucus in the Senate Finance Committee; see "Selling Quotas," National Journal, Feb. 14, 1987, pp. 370-73. The GAO has recommended "experiment(ing) with auctions in selected Section 201 cases" on the basis of its conclusion that "the potential advantages of auctioned quotas,

each case. (Automobiles and meat should be excluded for reasons specific to the present state of those arrangements.) The Administration should bring each conversion agreement back to the Congress for approval under the familiar fast-track procedures. This process would assure both the domestic industries and the foreign suppliers that the import controls would be phased down and eliminated, so that they could plan their strategies accordingly.

Such a program would make a major contribution to United States and international trade policy. By banning the use of export restraint arrangements by the country which has pioneered their development, it would at a stroke take the lead toward eliminating the most pervasive of the "gray area" restraint measures which have undermined the trading system and blocked successful negotiation of a new GATT Safeguards Code. Such a code would in turn provide meaningful international regulation of import barriers to supplement Article XIX of the GATT, and would help ensure that industries in other importing countries would also pursue positive adjustment rather than receive perpetual protection--thereby avoiding the risk of trade diversion to the United States. By enshrining assured degressivity and elimination of these current import controls, and by providing a source of substantial self-financing for positive adjustment instead, such a US initiative would in fact convert the Safeguards Code into an Adjustment Code and breathe new life into the basic principles of trade liberalization of the GATT. By providing a means to finally reverse the trend toward tighter protection of textiles/apparel, it would permit dismantling of the MFA and a return of that crucial sector to normal GATT rules.

Such a program, once fully in place, could transfer about $7 billion of revenue to the US Government: about $4 billion in textiles/apparel, $2 billion in steel, several hundred million dollars each for dairy products, machine tools, specialty steel and sugar. The shift in dairy would be coming largely from American importers, rather than foreign exporters, because that QR is now administered by domestic allocation primarily on the basis of historical shares of the import market.

The most promising case for immediate action might be steel, at least in domestic political terms. Unlike textiles/apparel, the bulk of the US steel industry has already recognized (and declared publicly) that it needs to downsize substantially; it therefore meets the basic adjustment test of the proposed program, and would presumably accept a phasedown and elimination of its import protection over a period of years. The industry is seeking government financial help to accomplish the transition, including by having federal funds assist in meeting the sizable costs of the unfunded pensions of workers who will be laid off. Our calculations suggest that the United States could capture over $2 billion in annual rents by converting the present steel quotas to auctions.

We would suggest earmarking about $1 billion of the total rents obtained from the quota auctions to finance the new program of worker retraining proposed by the Administration, and additional amounts to finance essential adjustment costs of the industries that would be downsizing (such as the unfunded pension benefits for steel). Since all or most of these costs would probably be borne by the government in any event, the bulk of the auction revenues would provide a net addition to budget receipts. Hence a shift to auctions could reduce the fiscal deficit by a substantial amount.

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relative to the known disadvantages of ... allocated quotas, could be significant"; see its International Trade: Trade Law Remedies Under Floating Exchange Rates, December 1986, p. 18.

Concerns About Auction Quotas

Four major concerns have been expressed about auction quotas.[6] The most frequent is that they "would be highly disruptive and costly to many industries", mainly importers and retailers, and "will have unknown and unforseen consequences."[7]

To be sure, any change in trading arrangements will produce anxieties among those directly affected--and some importers and retailers may derive modest rents under the current regime of giving the quotas to the foreign exporters. But there are several ways to minimize or totally eliminate any real risks, as demonstrated in the Australian and New Zealand auctions which on the whole have been proceeding quite smoothly for several years.[8] In fact, importers and retailers would be among the chief beneficiaries of a shift from allocated to auctioned quotas--and there is, in any event, no reason to spare them totally from a change which would have such large benefits for the country as a whole.

Several safeguards could be built into the auction system to avoid trade disruption. First, a substantial share of the auction tickets could be offered on a "first refusal" basis to current importers on the basis of their historical market shares. They would have to pay for the tickets, at whatever price emerged from the actual auction of the remainder, but would be assured against being "shut out" of the market or even, depending on the share provided on this basis, against any significant cutback--and they could of course bid for more in the auction. Such an allocation would simultaneously protect against any one or several bidders "cornering the market," by assuring that most or all current importers remained in the trade, as would application of the standard antitrust laws and procedures. Fifty per cent of the tickets could be allocated in this way at the outset, or one could even start at 75 percent in the first year and then phase down to 50 percent in the second year and 25 percent in the third.

A second safeguard would be a small bidder set-aside. As in Treasury security auctions, where "non-competitive" (i.e., small) bidders receive the full amount of their bids at whatever price emerges from the actual auctions among the large participants, "small" importers could get all they want "off the top."

Third, an active secondary market in quota tickets should exist from the outset. Any American, including American agents of exporting countries and companies, would be eligible to bid. If some bidders wound up with excess tickets, they could sell that excess in the secondary market. Any bidder who came up short would then have an immediate and ongoing opportunity to make up his shortfall.

We would recommend that these safeguards be included in any auction quota system adopted by the United States, though we seriously doubt that instituting such a system would carry net costs to importers and retailers. Indeed, at least three features of the scheme would be of major benefit to those industries: the steady phasedown and eventual elimination of the entire quota regime, and the steady move away from country quotas to "globalization"[9] (and hence much greater flexibility of sourcing the imports). Moreover, in textiles/apparel, the most important of the sectors for importers and retailers by far, an auction system would seem to be simpler than the current regime with its negotiated restrictions on more than one hundred individual product categories and over forty individual countries.

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[6] In addition, some have argued that they would raise consumer prices and violate GATT rules. Neither charge stands up to analysis, as indicated in Chapters 3 and 5, respectively, of Auction Quotas and United States Trade Policy.

[7] Eugene J. Milosh, "Auctioning of World Trade," Journal of Commerce, Feb. 6, 1987, p. 15A. Mr. Milosh is President of the American Association of Exporters and Importers.

[8] These systems experienced some problems at the outset but soon settled down, and were recently affected by the sharp depreciations of their countries' currencies which sharply reduced demand for imports. We would learn from their record, however, and could also be confident of a much more effective auction system simply because our markets are so much larger and thereby assure more competitive bidding and implementation.

A second argument against auction quotas is that they would require a sharp increase in administrative costs and bureaucratic involvement. This is extremely dubious; the GAO "saw no reason to expect any substantial difference" between auctions and other forms of administering QRs.[10] New Zealand runs its entire, admittedly much smaller, auction system with six officials and a computer. It is hard to imagine that administering auction quotas for textiles and apparel would be more complicated, and labor-intensive, than negotiating and administering bilateral restraint agreements with over forty countries and more than one hundred product categories. And it must be recalled that the recommended conversion of QRs to auction could raise as much as $7 billion of additional revenue--which would obviously swamp even the most extreme estimate of how much the system would cost to administer.

A third concern is that auction quotas would be so successful in augmenting government revenues that we would become "hooked" on the policy and that the quotas would never be phased down, let alone eliminated. Indeed, some fear that new quotas would be adopted to add further to the totals. The issue is whether US trade policy could be driven by revenue considerations as is the case in some developing countries (and was the case in the United States and other industrial countries in their early years, before they had income taxes and other major sources of revenues).

Historically, the answer is negative. The United States has cut its tariffs by about 90% over the past 50 years, with little or no concern for any resultant loss in revenues. Indeed, revenue effects have been ignored in the debate over reducing duties in the series of postwar trading "rounds"--and tariff revenues have in fact risen sharply due to the increases in trade resulting in part from the reduction in tariff rates.[11]

Conversely, some of the most important quantitative trade restrictions employed by the United States have persisted for extensive periods without providing any revenues for the United

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9. "Globalization" is put in quotes because we would recommend coverage only of those countries already participating in the trade restraint regimes, i.e., we would not extend the textiles/apparel QRs to Europe or Canada. However, the covered countries would increasingly be treated together rather than assigning individual quota to each. This is necessary inter alia to avoid the risk that exporters in individual countries, perhaps organized by their governments, could collude on price and recapture the quota premia--a type of "retaliation" against a US move to auction quotas which would be virtually impossible if the quotas were "Globalized" because all supplying countries would then have to collude together.

10. GAO report, p. 19.

11. Tariff revenues have risen from $3.2 billion in 1929 and a low of $1.2 billion in 1949 to $12 billion in 1987 (all calculations in 1980 dollars) because of the enormous rise in the volume of trade.

States Government. As noted, some of the textile/apparel controls have been in place for over thirty years. Steel restraints have persisted for about twenty years, with only two short interruptions. Sugar quotas have existed for most of the last fifty years; dairy quotas for almost thirty-five years. The failure of these programs to generate revenue has not seemed to shorten their life span.

In the only contemporary experiences with auction quotas, in Australia and New Zealand, the technique is being used as part of a phasedown of protection. Despite the devotion of considerable budgetary resources to the adjustment programs of the covered industries, the expansion of quota limits continues apace.

The best defense against this "opiate" effect, as it is often termed, is to place the auction quotas in the overall trade policy context advocated above by specifying in the basic authorizing legislation that (1) a considerable portion of the revenues will be earmarked for industry adjustment rather than going into general revenues and that (2) the protection itself is to be strictly limited in time and degressive over its lifespan. As already noted, these two steps would also obviate important trade policy problems and would thus contribute to foreign acceptance of the new system without insistence on new forms of compensation or retaliation.

It should also be noted that interest has recently been expressed in some Congressional quarters in using trade policy to acquire budget revenues via an import surcharge. There is, of course, a key difference between a new surcharge and the conversion of existing allocated quotas to auction quotas: the former would represent a substantial layer of new protection whereas the latter would simply change the nature of implementing an existing level of protection. (This problem also applies, though with less practical impact, to the low-rate tariff on all imports to finance adjustment assistance included in the Bentsen-Danforth outline for the Senate Finance Committee.) If political pressure to raise revenues via trade were to become irresistible, auction quotas could therefore also be viewed--even by those who did not favor them in general--as a less bad alternative.

The final concern about auction quotas, clearly related to the previous point, is that the political process in the United States could produce a scheme which, in practice, failed to include the features required for positive trade policy and overall US economic benefits. For example, the scheme could seek to seize a maximum amount of rents for budget purposes, by mandating an immediate transfer of all QRs to auction without renegotiation of existing international agreements, and exclude any earmarking of funds for adjustment purposes or a required phasedown of protection.

There is no definitive answer to this problem, and it must be viewed as a serious risk. The risk may be particularly acute at the present time, with convergent pressures to "do something" about both the massive trade deficit and the budget deficit.

The only answer is for the trade leadership of the Congress, notably of this Subcommittee, and of the Administration to insist that the package be held together so that the result will promote overall United States trade and economic interests as well as concerns about the budget and those of the protected industries. For example, the Administration should embrace auctioning as a means for making import restrictions more transparent and market-oriented, in keeping with its strong belief in free enterprise and opposition to government intervention, but veto the approach if it were not firmly linked to positive industry adjustment and phasedown/elimination of the QRs themselves.

Summary and Conclusions

We believe that a mandated shift to auction quotas, as part of a package of reforms of United States trade policy and industry adjustment strategies, could make an important contribution to enhancing American competitiveness, reducing the budget deficit, and improving United States and international trade policy. Hence it should be included in any trade bill passed by the Congress in 1987 or 1988, with the following features:

1. Any *new* QRs adopted by the United States should be implemented through auction quotas. This decision alone could be quite significant since new cases are possible over the next few years in major industries such as automobiles, footwear and semiconductors.[12]

2. The Administration should be directed to negotiate the rapid conversion of *existing* "export restraint arrangements" (except autos and meat) to auction quotas.

3. All revenues generated by the auction quotas (or by tariffs in new Section 201 cases) should be placed in a new Adjustment Assistance Trust Fund, as provided in Section 122 of HR 3. The resources could be used to finance adjustment assistance for all trade impacted industries, whether or not they receive import relief. Any excess would become general revenue of the Treasury and reduce the budget deficit.

4. All auction quotas would be progressively liberalized and eliminated over a fixed period of time, perhaps five years for new cases (as in present law) and 10-15 years for existing cases.[13]

5. The auction quotas should cover all restricted suppliers together, rather than being instituted on a country-by-country basis. (Currently uncovered countries, such as Europe and Canada for textiles/apparel, would remain uncovered.)

6. The administrative techniques for implementing the auction quotas should be designed to minimize market disruption. They could include setting aside a substantial proportion of the quotas (perhaps 50% at the outset) for traditional suppliers on the basis of their historical market shares, a small business setaside, and an active secondary market.

Such a package could, as noted, simultaneously serve a number of important United States economic and trade policy goals. We stress the interdependent nature of the several parts of the proposal, and commend it to the Committee on that basis.

12. We would primarily envisage the use of auction quotas in new cases under Section 201. However, any QRs adopted under Sections 232 and 301 could also be implemented via auctions--without the phasedown and elimination features--as long as findings of national security interests and unfair foreign trade practices, respectively, were met.

13. It should be noted that annual job losses under a 15-year phaseout of protection for the apparel industry would be less than the industry's normal attrition rate from retirements and quits. See William R. Cline, *The Future of World Trade in Textiles and Apparel*, Washington: Institute for International Economics, forthcoming.

TABLE 1

POTENTIAL REVENUES FROM CONVERTING TO AUCTION QUOTAS

(million dollars)

Industry	Auction Revenue
Textiles and apparel	4,171
Carbon steel	2,770
Automobiles	2,200[a]
Sugar	560[b]
Machine tools	320[c]
Dairy products	250
Meat	135[d]
Specialty steel	50

Notes:

a. Estimate in 1984 when the quotas were biting.
b. Based on 1986 prices and import level.
c. From the National Journal, February 14, 1987.
d. 1983 estimate; there are no restraints in place at the present time.

Chairman GIBBONS. Thank you. In setting up this panel this morning I asked the staff to set up conflicting views, and I hope perhaps you on the panel ask each other some questions, or propose some things to each other, as we Members of the Congress deal with this.

Let this be a free and flowing discussion after we have heard from each member of the panel.

Our next panelist is representing the Footwear Retailers of America, Peter Mangione.

STATEMENT OF PETER T. MANGIONE, PRESIDENT, FOOTWEAR RETAILERS OF AMERICA

Mr. MANGIONE. Good morning, Mr. Chairman, and members of the committee. My name is Peter Mangione, president and executive director of the Footwear Retailers of America.

Our association represents the chain shoe stores of American, whose members sell about half the footwear sold in the country through more than 20,000 stores which provide employment for some 120,000. We sell, primarily, low priced shoes to low and middle-income customers, and our average retail price of footwear is under $15. Before outlining our specific concerns on auctioning this morning, I want to commend the committee for its efforts last year in resisting efforts to add sector-specific measures to the trade reform bill, and for developing a reasonable series of amendments to Section 201.

We believe that sector-specific amendments to trade reform legislation would hinder enactment of such legislation; we urge the committee to once again resist such provisions as it considers H.R. 3. We are particularly concerned with the possibility that an amendment to the trade reform bill may be offered which could bring about the auctioning of existing and future quotas, including possible future quotas on footwear.

We are concerned that in an effort to fund adjustment programs, particularly under section 201, or reduce the fiscal deficit, Members may look at auctioning quotas as an attractive source of revenue. In considering such proposals, we urge Members to keep in mind the administrative problems, adverse commercial consequences, as well as the international ramifications of auctioning.

Despite the theoretical arguments made on the virtues of auctioning, we believe the costs of auctioning far out weigh the benefits. As merchants, our chief objection to auctioning is the uncertainty that a government-run free-for-all would introduce to our normal business of finding the shoes for our stores.

Retailers simply would not know from one auction to the next whether they would have any quota at all. No businesses, especially one with large fixed investments such as retail chains, can operate with such uncertainty.

Under an auction system some bidders will receive 100 percent of their needs, while others will receive less than their needs, or perhaps little or no quota. This is the essence of the auction; there are winners and losers.

Under such circumstances, it is inevitably that emotion, panic, not reason, becomes the driving force for the bidding as merchants bid higher and higher just to say in business. In the Australian case that Mr. Bergsten referred to, shoe bids on an ad valorem basis leaped from 50 percent in the first year of the program, to 126 percent in the fourth year of the program.

This was on a system where only 35 percent of the quota was up for bid. The other 65 percent was allocated on historical performance basis.

It is very much along the lines Mr. Bergsten has recommended, but still there was absolute total panic, because you can't operate 100 percent of your business on a 65 percent allocation. You need 100 percent.

So everyone was panicking over that remainder, that marginal quota was the difference between being in business and not being in business.

I would also point out in the Australian experience that 85 to 95 percent of all of the quota in the auctions was won by less than 10 firms each year, despite hundreds of bids. The concentration that we will refer to in a moment is very real in Australia under its system.

These results of the auction system contrast sharply with the commercial realities of quotas distributed on a historical performance basis, such as those allocated under the orderly marketing agreements, like the textile bilateral arrangements. Under these programs foreign governments distribute the export licenses to their producers.

If a quota only allows 90 percent of a country's prior year shipment, each factory receives export licenses for 90 percent of its last year's shipments. Thus, the quota apportionately reduces the factory's exports. There are no huge winners or losers.

This system keeps in place the commercial relationships between foreign producers and U.S. buyers. As merchants our supply may be reduced, but at least we know we are still in business.

Our second objection to auctions is the potential for predatory practices. In an intensely competitive business, like footwear retailing, where every company is looking for a competitive advantage, firms will inevitable look to the auction process as a means of enhancing their market share at the expense of their competitors.

Through auction strategies, including the making of a preemptively high bids, companies will seek to destroy competition. By gaining the quota in this fashion, competitors with the help of the Government can simply shut out other firms from the business.

Frankly, we fear that this power of auction would so drive business activities that government would be tempted to regulate the retail business in order to prevent unhealthy concentrations. It surely would be a case of the tail wagging the dog for import restrictions designed to help domestic producers to result in extensive market share regulation of the retail industry.

Finally, it is important to keep in mind that a system, such as auctioning, designed to capture quota arrangements presently held by foreigners, will not come without a price. There is no free lunch.

Foreign governments that have entered into restraint agreements with the United States, have figured in this quota rent as the quid pro quo for their agreement to limit voluntarily their shipments to the United States. Their payment for the compliance with the U.S. request for restraint is the quota rent.

If the U.S. now appropriates the quota rent for itself, the bargain will be broken. Surely, the United States will wind up paying back these foreign governments in the form of compensation and retaliation, as those countries exercise their rights under the GATT.

Thus, while auctions may put some money in the Treasury, other American business will wind up paying the bill back to the foreigners.

In conclusion, as merchants we strongly urge the committee to consider the use of tariffs as the most appropriate way of capturing for the U.S. Treasury the higher consumer costs of import protection, and of funding any trade adjustment assistance programs.

Tariffs are predictable and do not have the uncertainties for businessmen inherent in any auction system. Thank you, Mr. Chairman.

[The statement of Mr. Mangione follows:]

STATEMENT

OF

FOOTWEAR RETAILERS OF AMERICA

This statement is submitted on behalf of the Footwear Retailers of America ("FRA"). FRA is an association of chain shoe stores whose members retail half of all footwear sold annually in the United States and who provide 150,000 U.S. jobs. A list of FRA members, who sell primarily low priced shoes to low and middle income customers, is attached. FRA wishes to provide the Subcommittee with its views on two issues that directly affect its membership: 1) the importance of maintaining the President's discretion to determine whether to provide import relief in section 201 cases; and 2) the disastrous consequences of requiring the auctioning of quotas.

Before outlining our specific concerns, FRA wishes to commend the efforts of the Committee members last year in resisting pressures to add sector-specific protectionist measures to the omnibus trade bill and in developing a reasonable series of amendments to section 201. Divisive sector-specific amendments such as footwear quota legislation would hinder the enactment of responsible generic trade legislation. FRA urges Committee members to once again resist protectionist pressures to add sector-specific relief provisions such as H.R. 1154, as they proceed to consideration of H.R. 3.

FRA is concerned with the possiblity that an amendment may be offered which would require the auctioning of all existing and/or future quotas. We have a vital interest in this issue since efforts may be made to impose quotas on nonrubber footwear either through legislation or as a result of an escape clause action. While the imposition of a footwear quota in and of itself would be a disaster for retailers and consumers, particularly low income consumers, requiring the auctioning of quotas would compound the costs and disruptions caused by quotas.

FRA is concerned that in an effort to find funding for adjustment assistance programs or for general deficit reduction purposes, members may look to quota auctioning as an attractive source of revenue. We urge members not to ignore the major administrative problems and commercial consequences, and serious international ramifications of auctioning. We believe that despite any theoretical arguments that may be made about the virtues of quota auctioning, the reality is that the costs of auctioning far outweigh the benefits. A far preferable method of funding trade adjustment assistance would be the approach taken in S. 490 of imposing a tariff of no more than 1 percent on all imports.

I. Amendments to Section 201

FRA believes that with the exception of the transfer of authority from the President to the USTR, the amendments to section 201 in H.R. 3 are reasonable. FRA urges Committee members to reject amendments to section 201 similar to those contained in S. 490, the Senate Finance Committee Omnibus Trade bill which remove or restrict the President's discretion to determine whether to provide import relief.

Section 201 provides import relief from fairly traded imports that have been demonstrated to be substantially injuring or threatening substantial injury to U.S. industries. Under GATT rules, countries whose imports are restricted as a result of escape clause actions are entitled to compensation or to retaliate against U.S. exports in an amount equivalent to the trade restrictions imposed. Therefore, remedies in section 201 cases must be imposed judiciously, based on a careful balancing of the interests of the petitioning industry with those of the interests of U.S. workers, consumers, distributors and producers in other industries who also would be affected by such relief.

S. 490 abandons this careful balancing and would put the ITC in the position of being the final arbiter of import relief. The ITC should not be given this final authority. Only the President has sufficiently broad authority, focus and expertise to conduct this balancing process. FRA believes that in contrast to S. 490, the provisions of H.R. 3 amending section 201 properly maintain the flexibility to balance factors affecting the national economic interest in making import relief determinations.

However, FRA opposes the provision of H.R. 3 which transfers ulitmate decision-making authority in section 201 cases from the President to the USTR. FRA believes that USTR lacks the expertise, resources and breadth of policy responsibility to analyze properly the factors involved in the national economic interest. The President, who has the ultimate responsibility for the national economic interest, is the only authority in a position to undertake such a far-reaching analysis.

USTR lacks the breadth of responsibility to decide the national economic interest. The USTR's mission is to carry out U.S. trade policy and advance our international trade interests. The USTR's focus is, therefore, only a small segment of the overall national economic interest. It does not extend to many of the most important factors involved in that interest such as the concerns of consumers, workers, U.S businesses (most of which are not directly involved with trade), growth of the domestic economy and other domestic policy goals, such as inflation control. Moreover, many international economic concerns, such as exchange rates and foreign debt, which can have an enormous effect on our national economic interest, are not the primary responsibility of the USTR. In short, H.R. 3 confers decision-making authority on an office that is not otherwise charged with the responsibility for making overall policy in an area in which its decisions can have a profound effect.

In contrast, the President has the constitutional authority and public responsibility for developing overall policies to further our national economic interests. The President is, thus, in the best position to analyze all the competing factors involved in that task and to make decisions in particular cases that are consistent with his overall national economic program. Only the President can properly make final decisions on issues that affect the national economic interest, since he alone is ultimately accountable to the public.

Ambassador Yeutter is on record as opposing the transfer of the final authority under Section 201 regarding import relief determinations from the President to USTR. It is in recognition of USTR's limited scope, areas of responsibility and resources that Ambassador Yeutter has testified that the President is in the best position to make the final decision in 201 cases.

Finally, FRA would urge Committee members to consider the proposal contained in H.R. 1155, introduced by Congressman Michel which would require the ITC to determine whether an industry would reasonably be expected to become competitive by the end of the import relief period and that the President evaluate the likely effect of import relief in restoring industry competitiveness in determining whether relief is in the national economic interest. FRA believes that these amendments correctly ensure that the role of import relief is to promote industry competitiveness. Moreover, FRA contends that the amendments are consistent with the overall objective of H.R. 3 which is to promote the competitiveness of U.S. industries.

II. QUOTA AUCTIONING

A. Overview

In testifying before this Subcommittee on April 9, 1986, Ambassador Yeutter opposed the mandatory auctioning of import quotas:

> Mr. Chairman, this proposal may be an economist's dream, but it could be a bureaucratic nightmare, and it would raise serious concerns regarding our international obligations. Section 1102 of the Trade Agreements Act of 1979 already gives us the authority to auction import licenses, but every time we have considered doing so we have concluded the costs far outweigh the benefits.

We agree with Ambassador Yeutter.

The experience of the Administration in evaluating the public auctioning of quotas is compelling testimony that the auction approach, while a well intentioned means of depriving foreign producers of quota gains, is simply too cumbersome and too costly. This is particularly so when the alternative means of keeping any scarcity gain in the U.S. -- tariffs -- can be achieved without administrative complications.

As a matter of sound government policy, we, like Ambassador Yeutter, question the wisdom of mandatory quota auctions in cases of quantitative limits on imports. Requiring quota auctions elevates academic theories about the capturing of the quota windfall above all practical considerations. Quota auctions are a novel idea, the consequences of which in the real world are unknown. Theorizing by economists on how they would work is scant comfort to retailers whose investments in stores and personnel would be constantly at risk depending on the whim of a bidding process.

Also, periodic public auctions would likely become a protectionist spectacle, as the news media focused on the ever rising price of bids, the panic quota buying as quotas neared filling and the profits of quota speculators.

It is also clear that the U.S. auctions would be of questionable effectiveness in denying foreign producers the quota gain in cases where they were part of an import control scheme -- such as OMAs -- that allocated quotas to specific countries. There, the foreign countries could simply adopt their own quota system and capture for themselves some or most of the quota gain: U.S. interests, including consumers, would then have multiple quota systems with which to contend.

Quotas are themselves a disaster for consumers, bad for businesses heavily dependent on foreign products without alternative domestic sources and of questionable value to U.S. industry. Auctions make quotas worse.

B. "Bureaucratic Nightmare"

Permanent Auction Corps. Auctioning quota rights is a complicated business. Government will need significant staff and expertise on an industry-by-industry basis in order to minimize counterproductive and unintended side effects. We question whether it can be done effectively. A bureaucracy devoted to conducting, administering, policing and investigating auction activities is assured.

C. Costs Outweigh the Benefits

For businesses, like the shoe retailing industry -- which would have virtually its *entire* source of supply subject to a government run free-for-all -- auctions would make normal operations impossible.

Auctions Mean Chaos for the Distribution Network. Quotas, themselves, can disrupt distribution channels, including the retail network. Auctions create additional hazards and dislocation for the distribution system.

Traditional methods of administering quotas have minimized the disruption of existing trade patterns and established commercial relations. This has kept down the overall costs to the public, including consumers, limiting the violence to commercial interests that otherwise flow from the quota induced shortages. Foreign countries subject to OMAs allocate quotas to their producers according to historical shipment levels. This has served to keep buyer/seller relationships substantially in place during the temporary period of import restrictions. An import licensing system, with U.S. interests allocated quota based on their historical import levels would have much the same effect.

Auctions, by contrast, invite a mad scramble for market share *enlargement* by quota manipulation and speculation with the largest, wealthiest and most sophisticated U.S. firms using the government system to weaken or destroy competition. This is a menacing concern in an industry like footwear where U.S. producers/importers have dominant market power -- to set prices and styles -- and can outbid non-manufacturing importers by spreading their higher bids across their domestic output, which is now insulated from foreign competition.

Panic Bidding: How Much Will You Pay the Government to Stay in Business? Existing patterns of trade and established commercial relations both domestically and abroad would be subject to radical disorder beginning with the first auction. *Firms that received no or little quota would be ruined immediately*.

Each subsequent auction would intensify fears and panic bidding. A comprehensive auction system would eliminate normal year-to-year business planning, as retailers and importers would not know from one year to the next whether they would even be in business.

Quota bidding would become panic driven as companies up bids to the highest possible levels -- just to try and stay in business during the temporary import control period.

The vagaries of auctions, especially the potential for *speculations, profiteering, manipulation and predatory practices*, add a new dimension of unpredictability to business planning and put in jeopardy the simple imperative that a company have the product that it needs to operate.

Auctions Would Destroy Retail Companies. Coping with an auction system will largely be a function of the resources available to a particular company to develop the sophistication and organization necessary to ensure the securing of the quota it needs.

Many importers and retailers (engaged in importing) will surely suffer, either because they bid too low and too high. Low bids could result in no quota and bids that are too high turn out to be non-economic and lead to financial ruin.

Importing concerns, including the nation's chain retailers, would have to develop new resources just to get products for their stores. Competition for quota, like all aspects of the retail shoe business, would be keen and the potential for misjudgments in this field are manifest, raising the possibility that even large firms could suffer financially, perhaps fatally, from errors in auction strategy.

Quota auctions such as one pursuant to escape clause relief, could bring about permanent alterations in the distribution network and the loss of many retailing businesses.

Speculation and Quota Auctions. A key auctioning system issue is whether quotas would be transferable. Bidders will either bid for too much or too little quota. Without transferability, quotas could not be fully utilized, thereby exacerbating the scarcity of supply problems associated with the quota and increasing the degree of protection. Since business planning is not a perfect science, it is essential that merchants have the opportunity to augment or reduce their quota supply in order to accommodate changing business needs.

While quota transferability is essential for business operations, it would also result in the creation of a secondary, commodity-like market, driven by speculation and profit. One can envision speculators entering quota auctions and buying up quota positions and later "retailing" quota to retailers and importers, recouping for themselves huge quota premiums.

As merchants, we believe that such a system could create an additional cost and premium over and above the quota scarcity rent itself, which premium would have to be borne, ultimately, by the consuming public.

Auctions Confer Undue Advantage on Domestic Producers/Importers. The Australian experience in auctioning a segment of their shoe quotas foreshadows what would happen if auctions were used here (at present about 35% of the quota is auctioned, the rest is allocated to importers, retailers, etc., based on their prior imports).

In both countries, manufacturers are also major importers. In the U.S., the ITC reported that about 45% of the value of all imports in 1984 were by U.S. shoe manufacturers (USITC Publication 1717, July 1985, A-86). Premium bids by manufacturers would establish the bidding pattern. These provisions would drive up auction bids above market prices.

> But by far the most significant influence on the tender quota price for footwear are bid levels determined by the dominant local manufacturing/importing bloc, which may control up to 45 or even 50 percent of all available quota, *i.e.*, base and tender. Unlike non-manufacturing importers, local manufacturers can amortise the cost of quota over their own local production and thus gain a significant competitive advantage in the tender bidding process.
>
> In practice, it is the bid levels set by manufacturing interests, rather than any market signals from consumers, which determine what others must bid if they are to secure some tender quotas.

Australian Retailers Assn. Footwear Committee, Submission to the Industries Assistance Inquiry, May 10, 1985, p. 11.

With this kind of control over imports, manufacturers are able to minimize their vulnerability to import competition by importing complementary rather than substitute products. In Australia, the resulting lack of competition has stifled domestic style and price responsiveness, and geared domestic production improvements to economies of scale rather than satisfying consumer demand. Thus, positive adjustment and preparation for return to a free market environment has been retarded by the power that the auction gives to domestic producers.

In the U.S., the potential for monopoly power in quota auctions by the large U.S. producer/importers is manifest and its exercise through the auction mechanism must rank as a serious public policy objection to the use of auctions in this industry.

In 1984 according to ITC data, U.S. shoe manufacturers controlled 70% of the factory value of all shoes sold in the U.S. ($4,062 million in U.S. shipments and $1,995 in import shipments). It is clear that no public policy would be served by conferring such an advantage on these domestic shoe producers, whose U.S. shoemaking profits have consistently been far above the average of all U.S. manufacturing (USTIC Publication 1717, July 1987, A-59).

D. Auctioning Violates United States Obligations Under GATT

It is not clear that the U.S. could establish an auctioning scheme which operates in a manner which is consistent with its obligations under Articles II and VIII of the GATT.

The escape clause provisions of Article XIX provide an exception from the GATT rules insofar as necessary to prevent or remedy serious injury to a domestic industry. However, an auctioning scheme could be viewed more as a revenue device and a non-tariff barrier than as a measure necessary to protect a domestic industry.

If the auctioning scheme were viewed as a revenue device and, therefore, not within the scope of Article XIX, then an auctioning scheme could be found to be inconsistent with Article II which prohibits the imposition of all fees beyond the bound tariff rate except those minimal fees commensurate with the services rendered. Since fees collected in a quota auction are apt to be higher than a minimal user fee, the auctioning scheme would likely be found inconsistent with Article II.

Additionally, Article VIII of the GATT provides that fees relating to import licenses "shall be limited in amount equal to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes." Whether or not fees resulted in additional protection to the U.S. industry, an auctioning scheme could be viewed as an additional tax on imports and therefore inconsistent with Article VIII.

Further, Article 3 of the Licensing Code prohibits the use of licensing procedures which in and of themselves have trade restrictive effects. Thus, the collection of an auction fee, the fact that the fee was more than a mere incidental user fee, and any administrative difficulties encountered by importers under an auctioning scheme could be viewed as trade restrictive effects.

III. CONCLUSION

It is of vital importance that the President's discretion under section 201 to balance all factors relevant to the national economic interest be preserved. H.R. 3 properly maintains this discretion.

Utilization of auctioning as a mechanism to allocate import quotas is impracticable. It would also compound the harm to consumers and retailers of any quota and is a cumbersome and costly way of attempting to keep quota rents in the United States.

FRA believes that the quota rent concern can be best met through tariffs rather than quota auctioning. Tariffs automatically send all revenues to the U.S. Treasury. The tariff revenues could be allocated to Trade Adjustment Assistance if Congress so elects. They are easily administered, interfere least with market mechanisms and have a much less disruptive impact on commerical relationships. Moreover, unlike quota auctions, tariffs provide the requisite certainty and predictability which allows retailers to operate.

FRA member companies operate, under the following names, some 20,000 retail stores and departments nationwide, accounting for about half the nation's shoe sales annually:

- BATA SHOE CO., INC., USA

- BUTLER'S SHOE CORPORATION
  - Butler's
  - Allen's
  - C.H. Baker Shoes
  - Mailing Shoe Stores
  - Marilyn's
  - Shoe Kicks
  - Hot Feet
  - Burton Shoe Stores
  - Sole Hole
  - National Shoes
  - A.S. Beck
  - Delton's
  - Grandstand
  - Joeffrey Shoes
  - Mary Jane Stores

- C & J CLARK AMERICA, INC.
  - Hanover Shoe
  - Big Sky

- EDISON BROTHERS STORES, INC.
  - Chandler's
  - Baker's
  - Leed's
  - Burt's
  - The Wild Pair
  - Gussini

- ENDICOTT JOHNSON CORP.
  - Endicott Johnson
  - Endicott
  - Father & Son
  - Liberty Shoes
  - Saveway Shoes
  - Nobil

- FISHER CAMUTO CORP.
  - 9 West

- J. BAKER, INC
  - *Ames
  - *Fisher's Big Wheel
  - Parade of Shoes

- J.C. PENNEY CO., INC.

*Leased shoe departments

- KINNEY SHOE CORP.
  - Kinney
  - Foot Locker
  - Lady Foot Locker
  - Frugal Frank's
  - Fredelle
  - Stylco
  - Athletic Shoe Factroy

- KOBACKER STORES, INC.
  - Picway
  - Shoe Works
  - Pix of America

- MELDISCO
  - *K mart

- MELVILLE CORPORATION
  - Meldisco
  - Thom McAn
  - Open Country

- MONTGOMERY WARD & COMPANY

- MORSE SHOE, INC.
  - Fayva
  - Upstage
  - Morse
  - *Bradlees
  - *Richway
  - *ShopKo Stores
  - *Murphy's Mart
  - *Hills

- GENESCO, INC.
  - Flagg Brothers
  - Hardy
  - Jarmans
  - Foot Scene
  - Johnston & Murphy
  - Factory to You
  - Cover Girl
  - Innes

- PIC 'N PAY STORES, INC.
  - Pic 'n Pay Stores
  - Barett Shoes

- J.S. RAUB SHOE CORP.
  - J.S. Raub Shoe Stores

- SEARS ROEBUCK & COMPANY

- SHOE CITY, INC.
  - Shoe City

- SHOE-TOWN, INC.
  - Shoe-Town

- SHONAC CORPORATION
  - The Footwear House
  - Shonac Value City
  - Hart's

- SPENCER COMPANIES, INC.
  - *Jamesway
  - *Rink's

- STANDARD SHOE COMPANY
  - Standard Shoe
  - Shoe Rax

- THOM McAN SHOE COMPANY
  - Thom McAn

- TRADEHOME SHOE STORES, IN
  - Tradehome Shoe

- VOLUME SHOE CORPORATION
  - Pay-Less Shoe Source
  - Volume Shoe Source

- WAL-MART SHOE CORPORATION
  - Wal-Mart Stores

- ZAYRE CORPORATION

Chairman GIBBONS. Thank you.

Nor Mr. Tompkins, representing Esprit de Corp.

You go right ahead.

STATEMENT OF DOUG TOMPKINS, CHIEF EXECUTIVE OFFICER, ESPRIT DE CORP.

Mr. TOMPKINS. Thank you, Mr. Chairman, and members of the committee.

I am Douglas Tompkins. I am here speaking on behalf of my wife and myself. We are the owners of Esprit, an international fashion apparel company based in San Francisco.

I am the chief executive officer. As a company we import 95 percent of our products from as many as 17 countries. We employ in the United States, about 2200 people, and sell close to $800 million at retail price.

Outside of the United States our business operates in 25 countries, distributing products and creating jobs for another 2,000 people. We are beginning now to export apparel from the United States, and are solid citizen taxpayers on our foreign profits.

This year taxable profits outside of the United States account for more taxes than income from U.S. operations. In short, we happen to be one of the few significant American companies in the apparel business that operates internationally, especially in as many countries as we do.

Be that as it may, I am here because I wish to offer what I feel is virtually an all-win proposition to end the bitter struggle between the apparel importers and the U.S. domestic textile and apparel industry. Last year my company fought hard against the proposed legislation after having organized a national group, hired lobbyists, and spent considerable money and energy.

Fortunately, our efforts seemed to have paid off, and the proposed quota rollbacks and the entire bill was defeated. It was, by most analysis, a bad bill, but it carried with it large emotional baggage, because the United States is in the grips of protectionist sentiments and, in fact, the domestic textile industry is being badly bruised by foreign competition. The reasons why are complex, and we need not discuss that now, but it brings with it the question of the need for protection from competition.

I, myself, believe strongly in the idea of free trade, the elimination of quotas, and that competition is healthy in the free enterprise system.

However, I am inclined to listen to the arguments of the U.S. domestic textile industry, despite the fact that I am an importer using foreign resources, and to say without debating the whys and wherefores of protectionism, that the U.S. industry deserves a chance to get back on its feet and become competitive again.

The question is how to do this without throwing the market into turmoil, and from my personal point of view, jeopardizing our own business, and likewise the business of most of our fellow importers. It seems to me that first we must draw a line tightly and surely to simply stop any further increase in imports.

Now I know this sounds radical coming from an importer. Nonetheless, if you leave any loopholes, U.S. importers, being clever types that we are, will create products that slip through the loopholes.

Ray, my cotton, for example, evaded most import restrictions last year.

I say return all the quotas back to the United States, and make a simple global quota system. Since new legislation just now being proposed, uses 1986 as the base year for further limits, I say fine, let's use 1986.

In simple terms, no more square-yard equivalents would be permitted into the United States than were permitted in 1986, which, as I understand it, represented about one-third of the total U.S. market, leaving the other two-thirds for the U.S. domestic industry.

Likewise, I would suggest an annual growth rate of 1½ percent, which probably would not substantially change the one-third/two-thirds split between U.S. products and imports. Our trading partners could not complain, particularly because 1986 is just behind us, and their potential would be roughly the same as it was.

I also would see this plan as having a 10-year life, where, thereafter, all of these restrictions would be removed and the U.S. industry then would be sufficiently strong and rebuilt and could compete in a world economy.

This does not mean that I endorse the present legislation, H.R. 1154, although I do see some elements that are concurrent with my own thoughts.

Now comes the important part for my company, and I believe for virtually all importers, and that is how to fairly allocate and control global quotas from within the United States. Now I emphasize fairness here, and I ask the legislators and the U.S. textile industry to be fair in their recommendations.

I believe that my proposal to put an absolute air-tight cap on imports, more than adequately demonstrates a fair share for the domestic industry. But, in turn, I would expect equal consideration towards the importing community, that in allocating initially the square-yard equivalents of what was imported into the United States in the calendar year of 1986, that the sole criteria be that of performance and that each importer be allocated whatever it imported in the year 1986.

Yet, to begin with, in consideration for the allocation, disregarding quota categories, there would be an initial charge of 5 cents per square yard equivalent. According to our calculations, this would amount to something in the neighborhood of $700 million.

This would be used to, one, administer the allocation system in the United States, and we have, incidently, a very, very simple proposition for this, which need not be discussed now, but could cost as little as $50 million a year to administer.

No. 2, pay trade adjustment assistance to American textile and apparel workers.

Three, finance programs for research and assistance for the domestic industry to improve its international competitiveness. There is a small growth factor of 1½ percent, which in the future could be sold by the Government to continue to finance such programs I just described, and all unused allocations would be used to raise money for the same purpose.

There would be provisions for the transfer of allocations among the importers in the secondary markets, with again a transfer fee that goes toward the pool. Quota could later be transferred by a supply and demand value, much like it is traded, say, in Hong Kong, but within the United States. This would allow importers to adjust to changing conditions in the market.

Speaking for ourselves, the present quota restrictions play absolute havoc on a fashion company which has thousands of styles in many fabrics and categories where planning has to be done 9 to 12 months in advance. I have recognized the needs for the domestic industry for the capping of total imports from any source, giving them the breathing room they insist they need to build a strong industry.

Frankly, I am more than happy to produce our products in the United States, provided there is a strong industry capable of supplying our particular needs. And in return, the importers would get a chance to continue with their businesses. After all, Esprit alone employs 2,200 Americans, pays a high tax bill, and we consider ourselves and our infrastructure to be as vital as any to the U.S. economy. We are a young and energetic company, which wants to participate in our industry just as the domestic companies do.

As for our foreign trading partners, I know that the EC will complain because they have never had quotas, but countries with big apparel industries like Italy and France are incredibly protectionist themselves. We also have a company in Italy, and we cannot ship our products to Italy from our international sources, the reason being that there aren't any quotas available. Other trading partners like Hong Kong, Korea, Taiwan, for example, have large trade surpluses with the United States as it is, and likewise will in all likelihood not lose much market share because they have good factories and infrastructures.

The other countries are presently shut out by either lack of quotas or lack of an industry which can compete. If they have a competitive industry they compete on an even basis. Undoubtedly, though, there will be many sides to their arguments.

Yet, returning the quota allocation to the United States and eliminating the allocation country by country will serve at least four major objectives: one, it will stem the outflow of U.S. dollars into foreign economies, just for quotas, which only cost but derive no value.

Two, it will cause our trading partner to compete fairly among themselves for our business. Three, it will facilitate the planning and logistics of production for the importers, and four, it should be noninflationary.

In advocating the return of the quota allocation to the United States my company stands to lose close to $30 million of quota we now presently own in overseas countries. We have slowly bought quota over the years at great costs, but I am prepared to give that up for a fair allocation system, as I have described, based on performance by all of us who have built our companies and our markets through years of hard work.

This, too, serves the American consumers in good quality products at fair prices, and does not in any way affect American made products because their two-thirds of the total U.S. market is thus guaranteed by the total cap on imports.

For me, I would prefer to see if any legislation is forthcoming, that it not be part of any omnibus trade bill, but remain a textile and apparel issue, because it is a specific industry with specific problems and needs. A customized solution will work best for our entire industry.

Also, I have listened to arguments put forth, especially recently, and here today, regarding a system of quota auctions. I would like to voice my opposition to quota auctions in general, although some of the plans just recently put forth have good merit and should be considered and perhaps moderated at bit.

I know that other importers support me on this, at least to the extent of being opposed to an open-ended, highest bidder auction system. At least there must be the initial historic-based allocation that I proposed earlier. I think once the initial allocations have been made to ensure the industry's smooth transition, then the auction system using growth percentages and nonutilized quotas from the previous year could be a great idea.

I have seen the auction system work in Australia and it was disastrous to the industry and allowed large companies to effectively wipe out competition, especially the wholesaler.

It was a rich get richer poor get poorer scheme. If the auction system seems to be the alternative, I would be forced back to the fighting stance that we took last year.

This I hope very much will not be the case.

I ask all parties, the legislators, the U.S. textile industry and the importers to consider what I think is a win-win plan benefiting all.

Finally, the bottom line of all this for me is to find a solution that first and foremost guarantees a fair share to both the U.S. domestic industry and the importing community. That, in short, is a policy of live and let live—to do this without first polarizing both sides by throwing either side into confusion, by being fair to American consumers, by asking our international trading partners to deliver to us a reasonable product at a competitive price, by not burdening government with an expensive bureaucratic system to administer, and by having real money left over to retrain American workers and invest in domestic factories and advanced machinery.

Lastly, I want to end the bitter battles between the U.S. textile industry and garment workers and the importers and to put that energy into good positive programs to make a better total industry.

Thank you.

[The statement of Mr. Tompkins follows:]

TESTIMONY OF

DOUG TOMPKINS
CEO, ESPRIT DE CORP.

Mr. Chairman and members of the committee, my name is Doug Tompkins. I am Chief Executive Officer and, with my wife Susie, owner of Esprit de Corp., a worldwide fashion apparel importing company based in San Francisco.

We employ 2,000 people in the U.S. and sell about $800 million of fashion apparel, 95% of it imported. Conversely, we are beginning to export some items made in the U.S. to our sister companies in Europe.

Worldwide, we operate in twenty-five countries with over 3,000 employees. Since we own a substantial share of all of these companies, we bring home our profits on which we pay U.S. taxes.

Esprit fought hard last year against the textile and apparel bill. We thought that was a very bad bill. The quota rollbacks were completely unfair and would have killed our business. We organized a national group to fight the bill, hired our own lobbyists, and spent a lot of time, money and energy.

Now we face the prospect of another bitter battle between companies like Esprit versus domestic manufacturers who still want more protection. I am just as ready to fight this one - another two years if necessary - because my business is in a corner and my back is to the wall.

But now it seems that the domestic industry is proposing some compromises. Well, if I understand them correctly, then let me say that I'm a fan of compromise over conflict. I'll even go the next step and make a proposal that will work for everyone. In a minute I'll describe my ideas.

I was asked to speak today because there is a new debate brewing. Some people have suggested to you, Mr. Gibbons, that the U.S. could improve this situation by selling quota in an auction. I understand the intent, but I think that auctioning quotas is another very bad idea.

As importers, we already live with quota uncertainties and complexities that are driving many companies out of business. An auction would nail the coffin shut! We are not selling autos, where the models change once in three or four years, or oil where the product is all the same all the time.

We are selling fashion which must be fresh every month - 1,000 or 1,500 new styles and colors twelve times a year. And we have to design, plan and purchase those products 9 to 12 months ahead of sale. If we are late, we might as well throw the product away because the stores won't take it.

We flatly can not do that if we have to buy our right to import in an auction which is subject to unpredictability, manipulation, and constantly changing rules. Just look at the disaster in Australia. I know because we have a company down there that is nearly crippled by the nightmare quota auction system.

But more importantly, Mr. Gibbons, a quota auction would be totally unfair! We and other businesses like us have spent many years of hard work and millions of dollars to build our businesses under the existing rules. We employ tens of thousands of Americans and pay hundreds of millions of dollars in U.S. taxes. Why should that be torn apart and disregarded, sold to the highest bidder? The net effect would be less money in the economy, more people out of work, higher prices to consumers.

I will fight a quota auction just as hard as the quota bill - because I think it is wrong. And I think we will win because I don't know anyone who thinks an auction could work.

But rather than fight against a bad idea, I'd sooner put our energy into fighting for a good idea - a way to stop giving hundreds of millions of dollars to foreigners for quota. We should instead start using that money here in the U.S. to fix some of the problems Mr. Jenkins and Mr. Hollings speak about. That's what this auction idea is aimed at - getting that quota money back here, for America.

I offer you an idea that is so simple and practical that some people will call it radical. Well, that's OK. Esprit is called radical every day. Regardless, we're partial to straight-forward common sense and getting things done. And we have thought this through very carefully and thoroughly over the last two years, with a great deal of research and analysis.

Now I want to be very clear about this: we hate quotas! We would like nothing better than to get rid of them completely tomorrow. Furthermore, most experts agree that quotas don't work. That's why the domestic industry, which has enjoyed quotas for twenty-five years, is still asking for more protection.

But getting rid of quotas would not seem like much of a compromise to the domestic industry. I'm eager to put this battle behind us and get back to work selling fashion. And I'm eager to have a strong, competitive domestic industry too. I would love nothing better than to be able to buy everything we need right here in America, without telexes, redeye flights, typhoons and revolutions to worry about.

So if we're going to have quotas, the solution is to make them U.S. quotas and keep the benefits here. Quotas should be allocated in the U.S. and given to Americans rather than allocated by foreign governments and given to foreign businesses.

That would break the foreign monopolies which we give to the exporting countries. They would have to compete with each other for American business. They could no longer charge us for quota and the American economy would recover that money immediately.

Now, I can tell you what this means first hand because Esprit owns a company in Hong Kong and we own over $30 million in quota. I'm willing to give that up tomorrow for a better system - run by Americans with the benefits in this country.

How do we do this? We must immediately replace the MFA and individual country bilateral agreements with U.S. quota. These would cover all textile and apparel imports from all countries for ten years.

I know that the EC will object bitterly to being included under quota. But on what grounds? There is no country more protected against apparel imports than France or Italy. I own a company in Milan and I'm trying to ship product into Italy from our international sources. It's impossible, not just tight, the way it is here, but downright impossible!

We propose that this new quota should be based on trade and quota levels in 1986. These new quotas should grow at 1 1/2% per year. We are willing to draw the line, clear and simple. The domestic industry says it needs to stop import growth to protect their two-thirds of the market - OK. We need to stop complexity, confusion and quota profiteering in our one-third of the market.

These quotas must be allocated to American businesses on the basis of their historic performance in the trade for the reasons I discussed earlier.

We propose that the U.S. Government should charge a fee of five cents ($.05) per Square Yard Equivalent (SYE) on all textile and apparel imports. This money - about $700 million in 1988 - would be used to pay for trade adjustment assistance for American textile and apparel workers. It would also finance programs of research and assistance for the domestic industry to improve its international competitiveness.

Finally - the bottom line of all this for me is to find a solution that first and foremost guarantees a fair share to both the U.S. domestic industry and to the importing community. That, in short, is a policy of live and let live - to do this without further polarizing both sides by throwing either of them into confusion, by being fair to American consumers, by asking our international trading partners to deliver to us a reasonable product at a competitive price, by not burdening government with an expensive bureaucratic system to administer, and by having real money left over to retrain American workers in a changing base economy.

Chairman GIBBONS. Thank you, Mr. Tompkins.

I have got some questions we could take the rest of the day on this one subject. I see a lot of people out there who would jump out of their chairs if we did.

Fred, you have heard what these other people say about your program; would you like to defend yourself a little right now?

Mr. BERGSTEN. I would, Mr. Chairman. I would like to respond, not to every specific point, but a couple of basic points that have been raised, because I think they are fair questions that have to be addressed.

The fundamental question, I think, that both colleagues on the panel are raising, is whether the importing and retailing industries deserve more protection than the producers. What they seem to be saying is that they cannot deal with any uncertainty, and both resist the auctioning idea, which says they would have to compete to get access to the imports that are coming in under quota.

As I have said, I am no fan of the import quotas. But even the producing firms in our textile and apparel industry, that are protected by that regime, don't get 100-percent certainty on their level of output every year. They have to compete with each other. They have to compete with the imports that are coming in. They have to respond to changes in the market. I, therefore, find it hard to understand why our importers and retailers, who are, in a sense, the paragon of competitive virtue feel that they have a right to 100-percent certainty. I don't quite see it.

In my proposal, I build in a 50 percent, or one could go to 75 percent, share of the auction tickets being sold on the basis of historical market shares. It is beyond me why representatives of this very competitive industry are unwilling to compete at that very fundamental level.

They talk about panic buying. Well, every week, all the investment banking firms and financial institutions in this country bid under auction for tens of billions of dollars worth of Treasury securities which are the life blood of their business. If they don't get any Treasury securities next week, they have a week with no profit, because that is their business the same way as shoes are his, or apparel is his, but they certainly don't panic bid. They operate within the system. They have learned to handle it very effectively.

Oil companies bid for drilling rights on the off-shore continental shelf. They put in sealed bids. It is an auction process. They don't panic. They don't live or die. They have learned to adjust to it.

As I said in my statement, I understand the anxieties. Anytime you change a system you obviously raise concern. But I wouldn't feel responsible, Mr. Chairman, coming before the committee and making a proposal unless we had studied it in other sectors, if we had not looked at it in comparison with the existing and alternative past trade regimes, and feel that it is a feasible system.

Let me address a couple of specifics in that regard. Mr. Mangione says that there will be a possibility of destroying competition in the market, predatory practices. First of all, that assumes a market where someone or a few people can take it over. My understanding is that the footwear retailing industry is one of the most competitive in America, with hundreds of firms. The apparel industry is certainly in the same boat with hundreds, perhaps thousands of firms competing.

It is not exactly your prototypical industry dominated by two or three firms where predatory practice is feasible. Even if it were, my scheme says you set aside half to three-quarters of the tickets on a historical basis. Obviously, those would be picked up by many of the people trying to avoid uncertainty, and by definition that means nobody could have a lion's share of the market. So where this view of predatory practice and dominance of the market comes from I, frankly, do not understand, at least under the proposal as I am putting it forward.

Mr. Chairman, what I am suggesting is that I have more confidence in the American companies in these industries than they are perhaps expressing themselves. They adjust to market conditions every day. This is admittedly a new market factor they would have to adjust to. All I am suggesting is it would be less deleterious, even for them, than the system they face now, and certainly not one that would lead to total disruption, panic, chaos and all of these hyperbolic words we have heard here.

I agree with Mr. Mangione's bottom line. He said, give us tariffs. I said in my remarks I would prefer tariffs for any new protective regimes. All I am saying is that, in a real world where you have quantitative trade restrictions, which I think in some of these sectors you will continue to have in the future, the auction quota approach might be a more beneficial way to carry them out.

Finally, let me just say on Mr. Tompkins, it seems to me the differences between us are not too great. He is really saying: bring the rents back, don't keep giving them to the other countries, force the foreigners to compete, facilitate planning, and ensure that it is a noninflationary approach that does not raise the consumers price. All he and I disagree on is the amount to be auctioned. He says start off with 100 percent on a historical share basis, move the annual growth increments of imports through the auction process, and devote the resulting revenues to industry adjustment. So he and I are on, basically, the same wicket.

The only question is the amount; and there I come back to my philosophical question. Why should his firm, or all the firms in his industry, have a 100 percent right to the amount they imported last year? Burlington Mills doesn't have the right to sell 100 percent of the output it sold last year, even though it is protected by import quotas. On pure equity grounds, not to mention market efficiency, I don't see any reason why there shouldn't be competition at that end of the market. I am very confident, frankly, that the structure of these two industries would permit it to happen without chaos, panic bidding, and all of the problems that have been suggested before us.

Chairman GIBBONS. Before I get accused of monopolizing all the time, I will turn it over to Mr. Jenkins.

I would like to work with Mr. Jenkins. You have got the ideas; he has got the votes. And some day I am going to be able to work with him. I don't know where it is going to be, but I am anxious to work with him.

Mr. JENKINS. I will be short.

Chairman GIBBONS. I am not sure of that.

Mr. JENKINS. As of last year.

Fred, first of all, I want to thank you. We have talked about this several times, and I understand your position.

I think you have done a tremendous job in trying to see if we could come to an auctioning process that might be workable. That might help the Federal deficit here, if we could pick up the money rather than letting it go somewhere else. I want to work with you on this, because I think it has great possibilities.

I want to ask some questions, but first of all, I want to also express my appreciation to both Mr. Tompkins and Mr. Mangione for their testimony.

Mr. Tompkins, I want to particularly thank you, because I know that we have been on opposite sides. I think you have been reasonable in trying to find some approaches that might be workable for your particular industry, as well as for the domestic industry. I think that we may be able in the future to sit down and to look at this in a very rational way, to see if we could come to some understanding.

As I understand your suggestions, you would allocate, based upon historical purchases, a global quota as far as imports is concerned. Is that right?

Mr. TOMPKINS. Yes; that is correct.

Mr. JENKINS. First of all, we are starting out with a common approach. You are saying that if we are going to have to have quotas, they ought to be global in nature; is that correct?

Mr. TOMPKINS. That is correct.

Mr. JENKINS. Would you charge the people who receive the allocations a certain amount for that allocation?

Mr. TOMPKINS. That is correct.

Mr. JENKINS. Your theory is that once that is done, then the holders of the allocations could then go where ever they wanted to. Let the world compete?

Mr. TOMPKINS. Exactly.

Mr. JENKINS. To sell to their allocation amount?

Mr. TOMPKINS. Yes.

Mr. JENKINS. There would be no auction, as such, under your situation, unless you set aside a certain amount for new entries into the market place. Is that correct?

Mr. TOMPKINS. I think that the auction system is appealing, but not initially. And the difference, I think, between our two theories, that are running quite parallel, one, is that I have the perspective of somebody in the industry, and Mr. Bergsten's theories are a little bit more theoretical, from an economic point of view. And the trouble is that there is a lot of planning and a lot of organization, and it takes nearly a year, and sometimes more than a year, for some parts of our industry to plan their production for the future, and consequently if you institute a system immediately, they can't make their plans.

Mr. Mangione expressed the fact that you can't make a business on 65 percent certainty; I think that was the number he quoted. And I am just saying that in the beginning you just allocate 100 percent to those people that already have it. That way they know they are on stream, and they can make their plans for the short term.

But over the course of time, as has been indicated in countries that are allocating quotas there, there are some good devices which will allow the unused portion of the quotas to fall back to the government to be auctioned again. In an industry full of as many categories as now exist, it is difficult to keep all of the quotas perfectly aligned so that each producer knows what it is going to sell in those categories. Consequently, a fair amount of the quota falls back to the body that gives it out, the Government. It goes back into a common pool and can be auctioned off. That can be kept in the hands of real producers that will produce a real activity in the economy, and eliminate just quota farmers and people who are just using that exclusive right that they got from having been a legitimate producer initially, and received the quota but no longer carried an active part of the industry. That will keep the life blood of the industry going around.

It is a little bit like the tax bill, the tax simplification bill last year, that was to try to get activity in the economy rather than passivity. That is the lines that I am thinking on.

Mr. JENKINS. I think your suggestion is important. What you are basically saying is that you understand the domestic problem. While you don't like quotas, nevertheless, you are agreeing under your proposal that we would go with a global quota. We would have built in your proposal 1½ percent a year growth. You are half way agreeing on the textile bill, because you see we have a global quota and one percent a year. We are based upon 1986 provisions and you are too.

Mr. TOMPKINS. Exactly.

Mr. JENKINS. What I am trying to do is pick up an ally on the new textile bill. We are very close in a lot of areas is what I am saying.

Chairman GIBBONS. His quotas eventually end and your quotas go on to 4,000 or 5,000 years.

Mr. JENKINS. No. We end these at 3,050.

I know my time is about up.

Peter, you are the minority today. You are afraid that it is going to run up the price a great deal of shoes as I understand it?

Mr. MANGIONE. That is not our major concern, Mr. Jenkins. Our major concern, if I may respond, is the one that Mr. Bergsten pursued, and that is the uncertainty.

I would just like to comment on his comment, if I may. Of course, we recognize that we don't want a guaranteed market share. That is not our purpose in his commentary but the reality and I think what is being lost sight of here is the power of the auction.

I think the Australian experience is very illustrative here. In the Australian situation we did have a set aside. We had a 65 percent set aside. That is a little more than a third of the quota was auctioned, and yet prices went through the roof.

I mean there was, in fact, panic bidding up to 125 percent ad valorem, and that was on top of a 50-percent tariff, a 175-percent tariff, people were willing pay for the right to bring in that marginal amount of footwear or apparel as the case may be, just to keep their businesses going. The power of that auction is incredible.

The second point, if I may just complete the thought, is that you do get concentration. And it is true, that the footwear industry, I think, at the retailing end, is one of the most competitive businesses in this country, but I must tell you that half the business is controlled by 2 dozen firms.

Now they are very competitive, Fred, against one another, but those kinds of firms have enormous financial backing, and very clearly could dominate an auction system as is the case with Australia, where you have less than 10 firms controlling 85 to 95 percent of all the auction quota.

The other thing that greatly concerns me here is that Mr. Bergsten's proposal really would ultimately bring us to 100-percent auctions. That is really what he was saying, and there you certainly would have complete uncertainty, where the power of the auction would favor very, very few companies in the end, and you would have unhealthy competition and that give us great concern.

Mr. Jenkins. You already import 81 percent of the shoes, don't you, that you sell?

Mr. Mangione. Yes, sir. But we are talking about—that is exactly the point, Mr. Jenkins.

We are talking about gaining the right to import that 81 percent upon which our businesses depend. Without the imported low priced footwear, we are not in business.

The problem is that an auction is going to allocate, by virtue of this bidding process, who gets the right to import that 81 percent; and it is going to be allocated on a very disproportionate basis. Some companies may get 100 percent of their needs; others will get none.

Mr. Jenkins. If 10 companies roughly control the 81 percent now; how could it be?

Mr. Mangione. No, I didn't say that. I said that about 2 dozen firms control about half of the business, only about half of the business.

Mr. Jenkins. Fred, would you like to address that?

Mr. Bergsten. Yes.

I am still not impressed that this sounds like a concentrated industry where somebody is going to monopolize it. Twenty-four companies for half the business constitutes a very competitive Herfendahl index, as we in the business try to quantify how competitive business is. That is very competitive and I remain to be convinced.

I would like to ask Mr. Mangione a question about his 125-percent payment for the import quota tickets in Australia.

The question, in terms of price, is not how much the importers paid for the tickets; it is the price that finally appears in the market place.

Now in theory what happens under the Australian system is that they simply converted the previous quantitative restraint over to this auction quota system, and in theory there should be no effect on the final price.

Now, I am pretty sure the final price of the shoe didn't rise by 125 percent, but that is really what I want to ask Mr. Mangione. I am really not so interested from the standpoint of the economy and inflation about the quota premium, because that may have been an accurate reflection of the binding effect that the previous approach had. The issue is: what was the final effect in the market place in terms of price?

Finally, just to clarify, he suggested my proposal was leading to 100 percent auction. I never said that. I think in practice I would leave it open, frankly.

I would start out with the 50 percent or 75 percent setaside. I would like to phase that down so that the market would become a bigger and bigger determinant of the price of the ticket. But I would be quite flexible and see whether one should go further down, stop at 50 percent, stop at 25 percent, in light what actually emerged in terms of the quota premiums, in terms of any possibility of collusion in the market, any possibility of cornering.

I would really let that be developed over time. Certainly in my original proposal I would not say with any assurance, go to zero, though in principle I would like to see that happen over time and don't see why it couldn't, as in all the other areas where the Government now auctions economic rights to the private sector.

Mr. JENKINS. Mr. Mangione?

Mr. MANGIONE. I would just respond by saying that again in the case of Australia we have seen the concentration that I am predicting here, and I think that if we have 24 firms controlling half of the business today, and we wind up with 10 or 6 firms controlling half the business after a few years of auction, I would say that is an unhealthy concentration.

Mr. JENKINS. How much does the retail price go up?

Mr. MANGIONE. I really can't answer that question but knowing how retailers operate, Mr. Jenkins, I can tell you that any tariff is passed on to consumers at the full markup. It is just like any other cost of business.

You just can't pay the Government 125 percent and not recoup it at retail, so I assume that the price did go up. I can tell you one other pernicious effect of that auctioning system, and that is the quality of the imported footwear collapsed because the tariff was so high that the price had to come down.

You find Australians running around Taiwan looking for 90 cent shoes because they simply can't sell at retail at a decent price.

Mr. JENKINS. What about Mr. Tompkins suggestion?

You already have 81 percent of the market from imports. It would appear to me that in that situation you would simply be helping, transferring the costs of the quota from over there to over here, to our Treasury, since you already have 81 percent of your market from imports?

Mr. MANGIONE. As I said, Mr. Jenkins, we certainly are not in favor of foreigners taking the cost of the quota and profiteering on it but we believe that tariffs is the way to transfer all of that to the Treasury, and quotas are just not the way to do that.

If the concern is the profiteering but foreigners, and Mr. Bergsten's by saying his first position is to use a tariff because it is clear, it is transparent, everyone knows what the cost of protection is and it would put all the money in the Treasury. If you begin with the premise revenues are your objective tariffs is clearly the way to go.

Mr. JENKINS. I know my time has long been up. I appreciate it, Mr. Chairman. I want to ask Mr. Tompkins one further question.

I was interested to see that you have a real problem getting apparel into Italy. You indicate that you just can't get it in there; is that correct?

Mr. TOMPKINS. That is correct. That is more or less a closed border situation. The Italians are incredibly protectionist about their textile and apparel industry, it is as simple as that.

They have quotas. I mean they have open borders for the EEC countries, namely, but try to ship something in from the Far East. Forget it. It is a drop in the bucket. There is a little quota but it is insignificant.

Mr. JENKINS. It is always amazing to me that with our restrictions—quotas—which I acknowledge, whether they are in apparel or in shoes or whatever, that every time we talk about making ours tighter, I hear all of these fears about the world trading system is going to collapse.

I am not talking about from you. Europe seems to be able to do this with impunity. Are we the only one that has to ignore our domestic market, our domestic producers? I just can't phantom that. It is very difficult for me.

Thank you, Mr. Chairman.

Chairman GIBBONS. Let me ask you, Ed, can I swap you increased tariffs for quotas?

Mr. JENKINS. I don't really believe that the tariff in the amount that you would want to exchange would be adequate. But, I will tell you what I will do. I will swap tariffs, reduce tariffs, for an ironclad quota system.

Chairman GIBBONS. That is going the wrong way.

Mr. BERGSTEN. Mr. Chairman, perhaps to enlighten that point, which is a very significant one, let me just mention that we have just concluded a very detailed study of the textile and apparel industry, part of which was to try to quantify the tariff equivalent of the current quota protection, which would quantify your offer. The conclusion was that the current apparel quotas amount to something like an additional 25-percent tariff, and the current textile quota amounts to something like an additional 15-percent tariff. So if you added those on to the existing tariffs, you come up with something like 50 percent on apparel, and I think, 30 percent on textiles, and that would be what you would be offering Mr. Jenkins as a quid pro quo for his backing away from quantitative restraints.

Chairman GIBBONS. We will leave that deal on the table and see what we can work out.

Thank you all very much.

Mr. MANGIONE. Mr. Chairman, if I may just be permitted one question for Mr. Bergsten?

Fred, I just wonder whether your support for auctioning would be quite as strong if it were not part of a package that brought about some date certain for ultimate liberalization of the restraints that we have been discussing here this morning.

It seems to me that the linchpin of your proposal is that we go to auctioning as an interim step to bring about liberalization of textile and apparel quotas and so forth. How would you feel about auctioning if it were coupled with a program where there was no date certain or even a program for liberalization, it was just part of a more or less permanent program; how would you feel about that?

Mr. BERGSTEN. You are right. I said very clearly in my statement that I view it as part of an integrated program.

The revenues from the auction would provide the wherewithal to provide the needed funding to help the adjustment of the industries, thereby to phase down the protection over a fixed period of time, and eliminate it on a fixed date. That date might be 15 years out, in the case of an industry with significant difficulties like textiles and apparel, and where we have had a restraint regime for a long time, but I would certainly support only an integrated package.

Mr. JENKINS. Peter, you are at 81 percent. You don't have much to go.

Mr. MANGIONE. I appreciate that, Mr. Jenkins. I was directing myself to the overall totality of Mr. Bergsten's package.

There may be a tendency here on Capitol Hill to pull parts of it away for revenue raising matters or for other considerations. I wanted to make clear that Mr. Bergsten is talking about an integrated package with auctioning only a part of it. I think, he may have different views on auctioning outside of it.

Mr. BERGSTEN. That is my proposal, right.

Chairman GIBBONS. The problem, as I see it, is we sit here, Jenkins says he is eight votes short. He is going to gamble on getting eight votes. He is right or he is damn close. And I don't see that if we adopt his quota system in perpetuity, as vague as a lot of the proposals are, and a lot of it is left to administration, I think I would rather be Secretary of Commerce with the power to decide who gets those quotas, than I would be a combination of Dillinger and every other crook I could think of, because you know what you could do with that one at election time to raise money for your political party.

It would scare the pants off anybody. That would make the Japanese liberal Democratic Party financing pretty pale by comparison.

Mr. JENKINS. Mr. Chairman, we couldn't be hurt any worse with a Dillinger at the Commerce Department than what people who have consistently taken the position that you have taken as far as the textile industry is concerned, and many others for the past 10 years. I would take my chances with a Dillinger in the Department of Commerce.

Chairman GIBBONS. I am not talking about how the textile industry would come out. The textile industry would come out wonderfully in the thing, but boy, what you could do to pass those quotas around. I think I will apply for that job if your bill passes. I want to get out there. So long as I have got a little impunity from what you could do with that thing.

Mr. JENKINS. My bill does not include a recommendation for you to administer it.

Chairman GIBBONS. Well, I understand that. I am just dreaming about what some other person could do that had a little imagination about passing out those quotas, wow. I hope our party is in control when we get that bill passed, because if it is, it will stay in control forever. We have got a perfect financing mechanism for everything you could think of.

Mr. **Bergsten**. Mr. Chairman, if I might just add one more word. In Mr. Jenkins' current bill, as I understand it, if it were to pass and still includes global quotas implemented by the United States, I would think it would be natural to include an auctioning feature in that bill. If you are already taking the quotas back to the United States, you have already faced the international problems of breaking up the MFA and the current bilaterals, and I would think then a logical corollary would be to auction the quotas, to achieve the kinds of objectives that I was stating earlier. That is, obviously, not my preferred package. And I have made that clear.

But if you went down the road with his bill, as you are suggesting could occur, I would have thought auctioning would be a natural component to make some improvements in what might otherwise occur.

Chairman **Gibbons**. You would have in the Secretary of Commerce a czar on clothing and textiles, because as I see it, the Secretary of Commerce could decide not only how much clothing he had but when he had any clothing at all or any innovations or changes, he could indicate the styles under the thing.

If he didn't like nylon there wouldn't be nylon in anything, or if he didn't like some new kind of product coming on, there wouldn't be any new kind of product coming on. Maybe my friends in the textile caucus want that much government control. I have always been a little afraid of government control.

Mr. **Jenkins**. I will agree to accept an amendment that he cannot set the style.

Chairman **Gibbons**. How about for us fat fellows?

Okay, let's go on.

Thank you very much.

Now you can see why this is such an interesting job here. Fiber, Fabric and Apparel Coalition for Trade, Mr. Dewey L. Trogdon.

STATEMENT OF DEWEY L. TROGDON, TREASURER, FIBER, FABRIC & APPAREL COALITION FOR TRADE, AND PRESIDENT, AMERICAN TEXTILE MANUFACTURERS INSTITUTE; AND CHIEF EXECUTIVE OFFICER, CONE MILLS CORP., GREENSBORO, NC

Mr. **Trogdon**. Thank you, Mr. Chairman. My name is Dewey Trogdon. I am the president of the American Textile Manufacturers Institute, and treasurer of the Fiber, Fabric and Apparel Coalition for Trade.

I am also chairman and chief executive officer of Cone Mills Corp., a textile manufacturer located in Greensboro, N.C. Today I am speaking on behalf of the America's textile, apparel, fiber and footwear industries, their unions and their are more than 2 million workers.

The problems of these industries and their workers are familiar ones to this committee. Indeed, the loss of 700,000 job opportunities to foreign nations since 1980 has become part of a national concern for the decline in American industry and American business opportunities.

In the last Congress, Members of both Houses voted overwhelmingly to provide our industries with needed import relief, President Reagan rejected your support and vetoed the bill, H.R. 1562. But with textile and apparel imports in 1986 setting an all-time record, with our trade deficit nearly 20-percent worse than in 1985 and with even further job losses, the message is clear: we need effective legislative help.

Once again, in the 100th Congress, concerned Members have introduced general trade legislation designed to help U.S. industries compete at home and abroad. We commend these bills; but hasten to add that they will do little to help America's textile, apparel, fiber and footwear workers.

They have lost their jobs to a flood of imports that has more than doubled since 1980 in a U.S. market that has only averaged a 1-percent-growth annually. The severity of our problem, the employment provided by this basic American industry and the failure of this administration to take effective action all require that specific legislation to address this unique problem be enacted.

That legislation which many of you are cosponsoring, the Textile and Apparel Trade Act of 1987, H.R. 1154, will provide this industry with the import control vitally needed to keep our jobs and keep them in America.

The bill's key provisions include:

Total, global limits will be established for each product category.

Each quota category will be based on record-setting 1986 levels. There will be no rollbacks in trade.

An allowance of one percent annual import growth annually, a rate that is compatible with the long-term projected growth of the domestic market.

Compensation for these quotas in the form of tariff cuts on products covered under the bill.

This bill will not target specific nations or regions. And it will allow the administration to exercise discretion and flexibility in its implementation. Textile agreements can be continued, renegotiated or terminated in an orderly manner.

And H.R. 1154 is consistent with the General Agreement on Tariffs and Trade.

This proposed legislation is effective and fair. It addresses objections raised last year to H.R. 1562. It does not single out or exempt individual countries. It provides the administration considerable flexibility. It is not inflationary since there are no rollbacks and quota compensation is provided. It will not provoke retaliation. It allows us to honor our existing agreements.

Clearly, the approach taken by this bill demonstrates this industry's interest in working with the administration, Congress and other interested parties toward the goal of passing responsible legislation.

And clearly, actions taken the past year by Administration officials and others, however well intended, have done little to solve the textile, apparel, and footwear import problems.

In closing, I urge this committee to include H.R. 1154 in any proposal reported out of committee dealing with import remedies. Our industry hasn't given up on us. We are willing and able to make a contribution to U.S. competitiveness. But, our contribution must be based on the certainty that our domestic market will not be overwhelmed by imports.

We ask for the import control we need to give our 2 million workers hope, jobs, a decent wage, and to give us a reason to invest in the future of our industry and our nation.

Thank you.

Chairman Gibbons. Thank you, sir.

Do you in the textile industry figure these quotas are permanent from here on out?

The bill has no expiration date on it. Mr. Jenkins says the 3500. I said 4000. Are you all really serious about this?

Mr. Trogdon. Are we serious about——

Chairman Gibbons. About no expiration date on these? You never want any change? That is the most drastic piece of legislation that has even been introduced in this Congress in 200 years. Is that what you want?

I mean, we are talking seriously now. You are only eight votes short. You want something that binds America indefinitely to a no change in competition status?

Do you really want the Secretary of Commerce to control indefinitely your industries? That is what you are asking for. Once a government or bunch of bureaucrats get a hold of an industry, you have done more to socialize America than anybody I have ever looked at.

Are you really asking for that? You are the spokesman for the industry here today.

Mr. Trogdon. Mr. Chairman, would you like me to respond?

Chairman Gibbons. Yes, sir.

Mr. Trogdon. Our legislation has a 10-year review provision in it, and I think it recognizes Congress has the authority to examine trade and trade legislation, and I think that we are asking for legislation to the extent and for such time as it may be necessary to prevent injury and remedy our problem.

I don't know how long that will take. I don't know how long it takes to get confidence back to invest in your industry. Investment is beginning to decline as the uncertainty we see in the Reagan administration makes us hesitate.

A tremendous investment in this industry was set off by Bob Strauss with the Carter white paper and the commitment from candidate Reagan in 1980 and the commitment from President Reagan in 1982 that he would relate imports of this industry to market growth.

Today there is much concern and hesitation. But to get to the point of your question, I think our legislation has a provision for a 10-year review and certainly Congress with trade responsibility and authority has the power to examine that if they think the remedy is accomplished.

I, frankly, Mr. Chairman, do not want my son bailing out of Nicaragua or the Middle East in a parachute made in Bangladesh and under quotas handed out by the Secretary of Commerce.

I think if we are going to look at what is important to this country in terms of investment and jobs and our defense mobilization, it is time that we look at trying to protect the remainder of our industry.

Chairman Gibbons. Has the industry ever gone under the existing laws that all other American industries abide by and ask the

Government for protection under that section of the law? That has been on the books for 25 years that I know of.

Has your industry ever gone and said on the grounds of national security we need protection?

I can answer that question for you. I know it is no.

Mr. TROGDON. It is no, but it has been brought up each and every time.

Chairman GIBBONS. Don't give me these patriotic arguments. You have plenty of room out there to do that.

Okay. You would tie us up into 140 narrow worldwide categories. Suppose somebody came up with something that fit the 141 category? How is it going to—how are we going to get introduction of that into the United States?

Mr. TROGDON. You mean the addition of a new category?

Chairman GIBBONS. Yes, sir.

You got 140 narrow categories worldwide that the Secretary of Commerce is going to give out as a political favor, I believe. There is no provision in your bill as to—no direction as to how he gives them out. I am glad we got a good Secretary of Commerce up there, but that is an awful lot of power to give one man. You have 140 categories.

How are we going to expand that if any new products come along?

Mr. TROGDON. I assume we would add new products just as we have had other products imported here. We have added them without too much problem.

I don't see any problem with adding them.

Chairman GIBBONS. There is nothing in the law that tells the Secretary of Commerce how or to add or anything else, it is just left up to him, to the czar of clothing and textiles in the United States.

Mr. TROGDON. We are certainly saying we feel the flexibility is there for the administration to implement it.

Chairman GIBBONS. There is a lot of flexibility there. It is just——

Mr. TROGDON. There is certainly provision for other products in the bill if you want to add them.

Chairman GIBBONS. I think it makes Gates look pale by comparison. It goes on in perpetuity. Ten years from now Congress is going to look at it again. It is going to expire. It doesn't require a vote. We are going to look at it in 10 years.

Let us and the Secretary of Commerce control that much in the economy for 10 years. If we grant that to you, what can we say to the automobile industry or what can we say to the steel industry or what can we say to the dairy industry or to the farming industry?

Do you really want to socialize America to that extent?

Mr. TROGDON. Mr. Chairman, I do not believe we are making any kind of a proposal to socialize America. I am not equipped to debate you on the subject of socialism.

Chairman GIBBONS. But you are giving to a czar the absolute power to give out political or economic favors that are massive in size. Your testimony here shows it is worth at least $3½ billion a year to $7 billion a year.

That is without worldwide quotas. I just can't—I don't know, if we do it for textiles, what answer to we give the rest of American industry?

Mr. TROGDON. Well, haven't we protected a good part of American industry?

Chairman GIBBONS. Not to the extent we protected textiles. You are so far out front of everybody else in protection, there is no comparison. Nobody has as much protection, except maybe cheese, as you do. Cheese, nobody can sell cheese unless their grandfather sold imported cheese.

You are going to set that up in textiles as I see it. I can't agree with your legislation.

Mr. Jenkins.

Mr. JENKINS. I am shocked.

Chairman GIBBONS. I figured you would be when you figured out what was going on.

Mr. JENKINS. Fourteen percent of the Democrats in the House, you know, 86 percent of them voted for the other bill. Don't be too upset, Mr. Trogdon, when you get this style of questions or statements from the chairman.

He has never done anything for the textile industry in my view and never will. So don't get too concerned about any statements.

When the bill was introduced last year and we designated in the bill country by country, he wanted flexibility for the administration. This year he met his objectives.

You gave flexibility to the administration. Now we don't want flexibility, we don't want a czar over there in the Department of Commerce or the White House.

Chairman GIBBONS. You misstated my position. I didn't want the bill on any grounds. I was ripping it apart.

Mr. JENKINS. I was just using your arguments from last year, because you said it was not flexible enough. This year it is flexible.

Some of the statement by Mr. Gibbons about the industry ignores this particular domestic industry, whether it be located in my State or wherever.

Some of the arguments we are going to hear on the House floor are that the industry is making more money than it has ever made. I want you to address that because that is a big issue this year since you have supposedly rebounded back from the 1985 year.

Will you address that?

Mr. TROGDON. Mr. Jenkins, I think I would agree with Congressman Armey who testified before this committee yesterday and said something very interesting about profits. He said that it is one of the wonders of the market place that the profits never last long.

Well, I certainly agree the history of profits in the textile industry surely conforms with his observation they don't last long. In the fourth quarter of 1986, compared to 1985, the industry is doing better, and I hope it does better in 1987 so we can defend them.

We find of 19 public companies in the industry, the gain in the fourth quarter of 1986; over 1985 was 38 percent over a disastrous 1985.

We had a lot of special one-time profit factors, we had a lot of redeployment mergers, buying and selling of divisions. We have some hot products certainly in denim and decorative home fashion fabrics.

There is an indication denim is hot, but Chinese denim products, imports from China, were up 289 percent in 1986. Again, apparel company earnings are not up significantly.

I think if you look at the trend of textiles you will find the estimated rate of return on sales for 1986 is below the average for all U.S. manufacturing, as it has been in every year examined since 1949.

The high profitability, I think, is currently due to the hot products I mentioned in the industry, to the cost efficiencies from relatively high utilization of equipment and capacity, and down-sizing a lot of our available capacity and replacement with newer, more modern and productive technology.

I think on that point, in addressing the improvement of our profits, an improving industry in an overall deteriorating industrial climate is hardly evidence of the robustness of the U.S. textile industry. If you take out steel and petroleum losses, the gap between us and overall industry widens even more.

So we have better profits, but I don't think it is a trend—if you look back to 1949—we can not look forward to increases continuing every single year.

Mr. JENKINS. It is your view you need legislation to give you some stability in the market place for continued investment?

Mr. TROGDON. Our problem, Mr. Jenkins, is going to be cash flow. You can already see investment is slowing down now just as you could see the investment I mentioned earlier that was triggered, I think, by STR Strauss and President Carter.

It is beginning to slow down, and I think to look ahead, we need to have the confidence that we are going to be able to keep at least 48 percent of our market in apparel and apparel fabrics. Imports now have 52 percent of it.

I think we need some confidence to invest and I think textile trade legislation will accomplish that.

Mr. PEASE. No questions, Mr. Chairman.

Mr. JENKINS. Thank you.

Chairman GIBBONS. Thank you very much.

Mr. TROGDON. Thank you, Mr. Chairman.

Chairman GIBBONS. The National Automobile Dealers Association, the American International Automotive Dealers Association, the Motor and Equipment Manufacturers Association, Automotive Parts and Accessories Association.

Mr. McCarthy.

STATEMENT OF FRANK McCARTHY, EXECUTIVE VICE PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. McCARTHY. Thank you, Mr. Chairman.

I am executive vice president of the National Automobile Dealers Association. We represent both import and domestic dealers, and have approximately 20,000 members. They handle over 35,000 new car franchises split about 50/50 between domestic and import franchises.

We certainly believe a healthy and open trading system is important for America. For this reason, we do support parts of this legislation and especially provisions to assist in removing trade barriers and strengthening the international trading system.

To this end, we support the provisions in the Trade and International Economic Policy Reform Act of 1987, granting the President authority to participate in a new round of multilateral trade negotiations.

These negotiations are especially important to American franchised car and truck dealers and their new car consumers because trade in vehicles could be one of the first victims of growing protectionism and breakdown of international trading rules.

We are particularly concerned, however, with several proposals in H.R. 3 which in all likelihood would result in import restrictions on a number of fairly traded products especially cars and trucks.

At this time, I would like to address certain concerns we have regarding several amendments to section 201 proposed in H.R. 3. In particular, the provisional import relief under so-called critical circumstances.

This greatly concerns us because the critical circumstances provision as spelled out in H.R. 3 is quite vague and there are no operative criteria set forth in the bill which would really make it clear as to how you establish that determination.

In addition, there are already tight time schedules regarding the International Trade Commission, which allows an industry to gain relief within 8½ months of the time of filing a petition. We think giving the U.S. Trade Representative the requirement he must make a decision within 30 days is impossible.

These are gigantic questions that come up, and I don't see how anybody could determine them in 30 days. NADA believes the provisional relief could also prejudge the final determination in section 201 cases by forcing the USTR to make a 30-day decision in a highly charged political context before all the facts are available. Therefore, it is clear in our opinion, this provision is not desirable and would create much more harm than good.

The second part of the provisions relating to section 201 we are concerned about is the transfer of decisionmaking authority from the President to the USTR. We feel very strongly the President is best able to deal with these broad issues by considering such matters, as the national economic interest and the interest of the country, the areas he is an expert in. He can also call upon all the agencies and departments of government for assistance.

On the other hand, the USTR is a specialist in trade, and does not have the access to all the other experts in government to assist in making these decisions. Therefore, we feel strongly the President and not the USTR is the proper authority to render decisions for import relief.

Another area that greatly concerns us is the scope of injury analysis. H.R. 3 would add several new factors the ITC must consider. In particular, two that concern us, are the industry's decrease in market share, as well as the inability of a domestic industry to adequately finance domestic plant modernizations.

We are concerned these factors, absent further clarification, may lead to decisions that really ignore world events.

In the auto industry, in particular, the decline in market share could result from a product no longer being popular, the shortage of gasoline, and certainly could be impacted by exchange rates. There are a number of other nontrade factors that could also cause a decline in market share.

Section 301, which you well know, provides the President with the authority to attempt to persuade foreign countries to eliminate unfair trade acts and policies which we feel is an effective tool.

We are concerned, though, with certain provisions proposed in H.R. 3 which we think would not promote an expansion of trade, but would actually restrict trade.

We do support the overall goals of section 301, but we fear it could be used improperly if its retaliatory provisions are made mandatory or too automatic. These are the provisions that concern us the most.

We are concerned about the retaliation based on bilateral trade balances, especially the so-called trade surplus quota provision which is in the bill. That is the most objectionable feature that we find because it, in effect, would require the imposition of quotas shortly after enactment on importations from countries such as West Germany and Japan based on their bilateral trade surpluses with the United States and their overall trade surpluses.

This, in our opinion, could well result in other countries adopting similar provisions in their laws which we know the European Community has already done in 1984.

So if we enact anything in this area, we can be certain other countries are going to react and we are going to have a heck of a time balancing our trade deficit by doing this.

In conclusion, we would like to mention that we strongly oppose this provision which could result in retaliation, mandatory quotas, and the triggering of automatic relief without taking the proper matters into consideration.

We do recognize that we have an overall trade deficit in this country that needs to be addressed. We commend the committee in attacking this, but we want to be certain in our judgment that you expand trade and negotiate the reduction of barriers and don't cause actions which are going to hurt consumers by higher prices and inferior products.

That concludes my statement.

[The statement of Mr. McCarthy follows:]

TESTIMONY OF
FRANK McCARTHY
NATIONAL AUTOMOBILE DEALERS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
FEBRUARY 27, 1987

Mr. Chairman and members of the Subcommittee, my name is Frank McCarthy. I am the Executive Vice President of the National Automobile Dealers Association (NADA). NADA is a trade association representing approximately 20,000 franchised new car and truck dealers across the country. Our 20,000 members own 35,000 new car franchises of which approximately 18,000 represent U.S.-owned, domestically produced vehicles and 17,000 represent import vehicles or vehicles produced domestically by import vehicle manufacturers. Last year our NADA dealers sold 15.5 million new cars and trucks. They come in contact with approximately 60 million American consumers each year.

On behalf of all of our members we wish to express our appreciation for the opportunity to testify before you today regarding proposals to amend Section 201 (the "escape clause") and Section 301 of the Trade Act of 1974. NADA has a deep interest in the trade legislation being considered by this Subcommittee since many of our dealers sell imported motor vehicles and all of our dealers, as well as the millions of customers they serve, may be affected by changes in these laws.

Franchised car and truck dealers believe that an open and healthy trading system is important for America and the retail auto and truck business. For this reason, we support legislation which would assist in removing trade barriers and strengthening the international trading system. However, NADA also believes that trade legislation should be consistent with U.S. international obligations and should not create impediments to the expansion of world trade.

To this end, NADA supports the provisions in the Trade and International Economic Policy Reform Act of 1987 (H.R. 3) granting the President authority to participate in a new round of multilateral trade negotiations. These talks present an important opportunity to improve the procedures and expand the coverage of the General Agreement on Tariffs and Trade (GATT). Last year Americans purchased more than 3.0 million imported cars and trucks. For that reason the negotiations are especially important to American franchised car and truck dealers, because trade in vehicles could be one of the first victims of growing protectionism and the breakdown of international trading rules.

Mr. Chairman, at the outset let me also commend this Committee for its wisdom last year in deleting a number of proposed escape clause amendments to H.R. 4800, the predecessor of H.R. 3. We believe that these amendments, if enacted, would have undermined the integrity of this "fair trade" statute. These included proposals: (a) lowering the causation standard so that any injury from imports would result in an affirmative determination; (b) prohibiting the U.S. International Trade Commission's (ITC) consideration of general recessionary conditions as a cause of injury; (c) making import relief automatic if the ITC found serious injury and approved an adjustment plan; and (d) authorizing the auctioning of escape clause quotas.

We are particularly concerned, however, with several proposed amendments to Section 201, included in H.R. 3, which in all likelihood would result in import restrictions on a number of fairly traded products.

The debate over changes to Section 201 law is not an abstract one to our members. Section 201 — which allows import restrictions to be placed on fairly traded goods such as cars and trucks — is the most likely trade remedy procedure for imposing tariffs or import quotas on motor vehicles. In addition, our members are all too aware of the consumer costs caused by the type of import restrictions which can be imposed in a Section 201 case, having experienced

Japan's "voluntary" export restraints for the past six years. Robert W. Crandall of the Brookings Institution estimated that in 1984 and 1985 U.S. consumers paid about $10 billion more for Japanese cars ($2,500 per car) and $16.6 billion more for U.S. produced cars ($1,000 per car) than they would have in the absence of auto restraints.

Because of these concerns, NADA is strongly opposed to several Section 201 proposals contained in H.R. 3. These proposals include amendments to the escape clause, which would: (a) authorize provisional import relief before a final decision by the ITC; (b) transfer the authority to grant import relief from the President to the U.S. Trade Representative; and (c) enlarge the scope of factors upon which a serious injury finding could be based.

With respect to Section 301, we believe that certain improvements in this statute are possible. However, we oppose several proposed changes contained in H.R. 3 which would go far, in our judgement, in transforming Section 301 from a negotiation statute to a retaliation statute. These include proposals to: (a) impose quotas on imports from countries with allegedly excessive bilateral trade surpluses with the United States; and (b) reduce the President's discretion in order to make import restrictions more automatic in certain types of Section 301 cases.

SECTION 201

We understand that the intent and objective of the escape clause is to provide a mechanism which would permit the President to grant temporary relief to a domestic industry that is seriously injured, or threatened with serious injury, by increased imports, even though the imports are fairly traded. If the ITC makes an affirmative injury determination and recommends import relief, the President may impose import restrictions designed to provide time for the industry to adjust to competition. Thus, Section 201 is designed to permit the United States to temporarily "escape" from trade concessions given to its trading partners.

The escape clause contains two basic principles: (1) that the ITC make an objective injury determination on the basis of "all economic factors which it considers relevant;" and (2) that the President determine the nature and extent of relief after taking into account a different set of statutory criteria, which in essence requires that he make a judgement as to what is best for the national economy as a whole.

Since the current version of Section 201 was enacted in 1974, there have been 60 escape clause cases, in 30 of which the ITC made an affirmative determination. The President provided some form of import relief in 15 of these 30 cases. Over the past four years, the ITC has considered 14 cases and it has made affirmative determinations in six. The President provided import relief in 4 of these cases (motorcycles, stainless steel, carbon steel, and wood shakes and shingles). In short, we believe that the escape clause has been an effective tool in granting temporary relief in exceptional cases for fairly traded imports.

Provisional Import Relief

NADA is concerned with the provision of H.R. 3 which permits the USTR to impose interim import relief before the ITC's injury determination if the USTR finds "critical circumstances". These circumstances are defined to exist if a substantial increase in imports over a relatively short period of time has led to circumstances in which a delay in providing escape clause relief would significantly impair such relief to the domestic industry. However, no objective criteria are set forth in the bill by which to make that determination.

In addition, Section 201 investigations already proceed on a tight time schedule. The ITC must make its final determination within six months of initiation, the President is required to announce his decision within sixty days of the ITC determination, and the President has an additional fifteen days to impose relief. Thus, a domestic industry can gain significant import relief within 8-1/2 months of filing its petition. Because of the extensive information gathering and complex analysis required, the process cannot properly move at a faster pace and result in a fair determination.

H.R. 3's temporary relief provision would create a vague "critical circumstances" test which is unrelated to the merits of a Section 201 case. This proposal would grant the USTR broad discretion to impose interim relief under a wide range of circumstances, regardless of whether a domestic industry is being seriously injured by increasing imports. Nor would temporary relief be based on a preliminary ITC determination, which is a prerequisite for interim relief in antidumping and countervailing duty cases. Thus, fair trade could be disrupted significantly for several months in cases where import restrictions ultimately were found to be totally unjustified.

NADA believes that the provisional relief proposal could also prejudge the final determination in a Section 201 case by forcing the USTR to make a quick interim decision in a highly-charged political context before all the facts are available. Under present law, the President's remedy determinations are the product of extensive consideration by a number of departments and agencies. An interim relief provision would require that essentially the same decision be made in a much shorter time-period with limited information. The subsequent granting of interim relief would, we believe, compromise the ability of the ITC to make an objective injury determination, and could create a presumption that relief should be continued, despite information developed later during the investigation.

The provisional relief amendment simply goes too far. Any possible need for interim relief will occur in exceptional cases, such as those addressed by the perishable commodities provision. Congress should not adopt such a broad and unfocused provision to "solve" a narrow problem.

Transfer of Decision-Making Authority from the President to the USTR

Under current law, the President, in rendering a decision on import relief, is directed under Section 201 to determine what is best for the national economy as a whole. He is required to make this determination by balancing such domestic economic interests as the cost to American consumers, the efficiency of import controls in promoting adjustment, the impact on industries which rely on the imports, the impact on U.S. exporters which might be harmed by retaliation or compensation, and the international interests of the United States. In short, the President's decisions in Section 201 cases have been guided primarily by the overriding factor that he must consider the national economic interest. This consideration, of necessity, embraces a wide range of factors, both domestic and international.

By contrast, the USTR deals only with trade issues and is not capable of fully evaluating the many other facets of the national economic interest which would enable it to render a proper decision regarding import relief. The President is fully capable of taking into account this broad range of national as well as international considerations. We believe the USTR would be hard pressed to effectively perform the careful balancing of interests required to determine whether relief is in the national interest, or what type of relief is most appropriate. We also believe that the USTR is more likely to be vulnerable to sector-specific demands for protection than would the President. In short, we are concerned that H.R. 3's proposed transfer of authority is likely to precipitate ill-considered import restrictions.

Scope of Injury Analysis

H.R. 3 would add several new factors to be considered by the ITC in making its threat-of-serious-injury determination. Under the proposal, a petitioning industry's decrease in market share as well as the inability of a domestic industry to adequately finance domestic plant modernization are among the new factors that the ITC must consider.

We are concerned that the addition of these factors, absent further clarification, may lead to decisions that ignore real world events. For example, declining market share in the automobile industry may be a temporary development, resulting from such factors as the strength of the U.S. dollar, interest rate changes, and transportation fuel shortages. In addition, a corporation's inability to finance domestic plant modernization may result from corporate decisions to invest in overseas production, captive imports or simply in ancillary investments. In short, we hope that the Subcommittee moves cautiously in this area to insure that changes are not made which either are unnecessary or which may result in ill-advised injury determinations.

SECTION 301

Section 301 of the Trade Act of 1974 provides the President with the authority to attempt to persuade foreign countries to eliminate unfair trade acts and policies and to bring foreign practices into line with international agreements. Of the major U.S. trade statutes, Section 301 is unique in that it is specifically aimed at providing increased market access abroad for U.S. exports. We believe that the intent of Section 301 is to eliminate unfair trade barriers and practices by negotiation rather than retaliation. The vast majority of concluded 301 cases in the last 12 years have been terminated without resorting to retaliation. In our view, retaliation represents the failure, not the success, of a Section 301 case.

While we support the overall goals of Section 301, it could be used improperly if its retaliatory provisions are made mandatory or too automatic. In such circumstances, Section 301 could not only fail to achieve its objectives, but tend to be counterproductive. Specifically, with respect to retaliation, whenever any increased duties or import restrictions are used to address these unfair acts or policies, there is likely to be an adverse impact on U.S. consumers, and perhaps U.S. exporters, in the form of higher prices, more limited choice and counter-retaliation.

Generally, we believe that certain improvements could be made to Section 301, including the imposition of reasonable negotiation deadlines (ideally, corresponding to GATT dispute settlement proceeding deadlines), the requirement of greater consultation with Congress during the pendancy of Section 301 cases, and the revision of the annual USTR trade barrier survey to include a comparative analysis of the overall openness of the U.S. market vis-a-vis that of each of its trading partners. However, we are deeply concerned by provisions contained in H.R. 3 which could make retaliation mandatory or more automatic in some circumstances.

Retaliation Based on Bilateral Trade Balances

The most objectionable feature of H.R. 3 as it pertains to Section 301 is the provision which would, in effect, require the imposition of quotas shortly after enactment on importations from countries such as West Germany and Japan based on their bilateral trade surpluses with the United States and their overall trade surpluses.

The "trade surplus quota" proposal attempts to deal with our trade deficit, first, by a unilateral demand that other countries reduce their trade surplus with the United States and, second, by the unilateral imposition of import restrictions if other countries do not comply with our demands. We fear that such unilateralism will be viewed by our trading partners as a violation of both our international obligations under the GATT and certain treaties and principles of trade among nations. It is our view that a country's competitiveness should not be measured on a bilateral basis with certain countries, but rather on a multilateral basis with all the countries with which it trades.

We are concerned that the "trade surplus quota" proposal is an approach to solving the trade deficit problem that is based on a faulty premise since it assumes that the trade deficit is primarily caused by the trade policies of other countries. As we understand the thinking of many experts in the field, the trade deficit has been brought about in large part by our budget deficit and the misaligned dollar. In other words, the problem has primarily been one of economic and monetary policy, rather than trade policy. This type of proposal thereby applies a harsh trade solution to a problem that contains many non-trade elements.

This provision of H.R. 3 would be injurious to U.S. interests in several ways. First, by its very terms it would almost certainly bring about the restriction of trade. Faced with the choice of increasing imports from the United States or decreasing exports to the United States, affected countries are likely to choose the latter. Second, it would very likely result in harm to our own exporting industries. As countries failed to meet the trade surplus reduction targets set by the proposal and therefore saw U.S. quotas imposed against their trade, they would be likely to retaliate. Such retaliation could take various forms, but the end result would be further curtailment of U.S. exports. Third, it could cause massive disruption among U.S. companies and small business retailers that depend upon imports. They would be placed in a situation in which they could never be certain if they could rely upon foreign sources of supply. In such an atmosphere of uncertainty, any plans for expansion of facilities and employment would have to be shelved.

In summary, NADA strongly opposes these measures because they set unrealistic deadlines and trade levels that would virtually guarantee U.S. import restrictions, and could lead to auto and truck import limits. The proposals will not increase U.S. exports or reduce foreign trade barriers, their ostensible purpose, but will hurt U.S. consumers by reducing product availability and increasing prices. We fear this provision of H.R. 3 just will not work and may well create more problems than it solves.

CONCLUSION

American franchised car and truck dealers believe Congress should take advantage of the opportunity presented by this year's trade bill to enact reforms which will expand U.S. trading opportunities and strengthen the international trading system. But in doing so, NADA urges Congress to reject proposals such as the amendments to Section 201 as discussed in this testimony which will serve only to erect new trade barriers against fairly traded goods, and amendments to Section 301 which would result in import restrictions rather than an expansion of U.S. exports.

Chairman GIBBONS. Mr. McElwaine.

STATEMENT OF ROBERT M. McELWAINE, PRESIDENT, AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. McELWAINE. I am Robert McElwaine, president, American International Automobile Dealers Association.

We represent some 9,000 dealers of imported automobiles and their 250,000 American employees.

Mr. Chairman, in one of the many times we have appeared before this committee, a couple years ago you commented about section 201, should we go into that room, we will come out with a whole lot less than we went in with. I am afraid this is turning out to proving you a prophet one more time in your long career here.

The adventures into section 201 that are currently being undertaken carry with them risk of severe damage to many U.S. industries, to import-dependent industries as well as export dependent ones.

In particular, we find extremely worrisome the administration's proposal that the recession should not be considered as a single cause of injury to an industry in a ITC determination under the escape clause. Under such a proposal, an industry suffering a downturn in sales during a recessionary period could almost automatically prove imports were the only principal cause of injury since the obvious principal cause is no longer to be considered.

So at the very worst time possible, industry would be almost automatically granted protection from import competition, triggering retaliation from the U.S. trading partners overseas and thereby deepening and prolonging the recession the country is already in.

It is establishing by legislation the exact format that was carried out in 1929 and 1930, a period of time I don't think any of us want to repeat. We hold entirely with the present philosophy of Presidential discretion in article 201 cases, although we are pragmatists enough to know some changes are inevitable in the present climate here in the Congress.

We would hope, however, that the proposals drafted in the Senate bill, S. 490, would prevail in the final legislative language because we find that preferable to the language in H.R. 3 in determining Presidential discretion in various cases. We are also considerably warmer toward the competitiveness finding required in article 201 in the Senate measure. I think it makes good sense to require that an industry seeking relief under the ITC escape clause action present some kind of an adjustment program, some kind of a program to show that that industry can become competitive and viable again.

This should not be simply a system of perpetual protection for industries that do not have the capability of becoming competitive ever.

In the 16 years this association has been testifying before this committee, we have always supported the concept of adjustment assistance. We believe the Federal Government has an obligation to provide both financial assistance to workers displaced by fairly traded foreign goods and provide them with some fort of retraining so they can find employment in other industries.

We hold such expenditures should be financed out of the general revenue. Again, taking a pragmatic look at that, we are realists enough to understand that in today's climate it is not likely any such program is going to be added to the general revenue fund.

Therefore, we would under certain circumstances endorse the establishment of a minimal surcharge not to exceed 1 percent on imports which would be used for adjustment assistance following a finding under the general agreement on tariff and trade that such an import surcharge was indeed within the parameters of the agreement.

And finally, we would take a long look at all proposals which would adopt the Gramm-Rudman-Hollings approach to trade deficits and by simply establishing a rigid mechanical process, eliminate trade deficits almost by computers.

The potential for damage to import dependent American industries is so great here as to be appalling. We estimate that under the present bill that has been proposed, the impact on the imported automobile industry in America would be to close 1,000 independent businesses and to put 30 to 40,000 employees of these businesses on the streets. If such measures are inevitable and are to be passed by the Congress, we would ask this committee take along, serious look at some type of damage control, some kind of stop-loss clause in such legislation that would guarantee fairness in the application of such limitations on imports and to ensure that no single import dependent American industry is destroyed by such a mathematical formula.

Thank you, Mr. Chairman.

[The statement of Mr. McElwaine follows:]

STATEMENT

OF

ROBERT M. McELWAINE

PRESIDENT

AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATON

Mr. Chairman and Members of the Subcommittee,

I am Robert M. McElwaine, President of the American International Automobile Dealers Association (AIADA), which represents the interests of over 9,000 American automobile dealers and their approximately 250,000 employees. I am accompanied by our counsel, Bart S. Fisher, Esq., of the Washington, D.C. law firm of Patton, Boggs & Blow. We are pleased to have this opportunity to share with the Committee our views on section 201 of the Trade Act of 1974. Last year, we urged the Congress "to stand firm in the face of protectionist calls to revamp section 201 to make its extraordinary relief more widely available." We commend the Committee for its efforts.

On balance, we believe proposals like title II of S. 490, the Senate omnibus trade bill, are more likely than the provisions in the House bill to help U.S. industries to adjust to import competition. We thus recommend that the Committee amend H.R. 3 during mark up and adopt those portions of the Senate bill that will encourage long-term adjustment, not permanent protection.

We hope the Committee this year can produce a bill that makes positive revisions to section 201. As it considers revisions to section 201, the Committee should keep three guiding principles in mind. First, the emphasis under the statute should be on positive industry adjustment, not import protection. Second, the extraordinary relief available should be provided only to those industries that can demonstrate that imports are their most serious cause of injury. Finally, the President should retain broad authority to determine whether relief proposed by the International Trade Commission is in the national interest. If section 201 embodies these essential elements, it will serve its intended function of providing temporary relief from import competition, while ensuring that the nation's overall effort to become more competitive internationally can be realized.

This Committee should not lose sight of the fact that section 201 deals with fairly traded goods. We have repeatedly told our trading partners that all we are seeking is a "level playing field". When unfair foreign trading practices are involved, there should be a bias towards protection. When a U.S. industry simply can not compete, however, it should make the requisite adjustments. Congress should not make section 201 a safe harbor from the cold winds of foreign competition. Section 201 should be limited to its proper role as a temporary mechanism of adjustment for import-impacted U.S. industries which will eventually be able to compete in the world marketplace.

Long-Term Industry Adjustment

At its inception, the "escape clause" was intended to provide temporary relief from import competition. Unfortunately, for several industries it has become a means of avoiding the need to adjust to changing patterns of trade and competition. In our view, the Senate bill is preferable to the House bill to the extent it emphasizes long-term adjustment, not permanent protection.

Of particular significance, the Senate bill strengthens the existing implied requirement under section 201 that any action recommended by the ITC after a finding of serious injury be able to remedy the problem permanently. If the Commission finds "no reasonable expectation that the domestic industry can successfully compete" with foreign producers after termination of any relief provided under the Act, the Senate bill would direct the Commission to recommend actions "necessary to provide for the orderly transfer of the resources of the domestic industry to other productive pursuits" (§ 204(b)(1)(A)(ii)). The Administration bill further supports structural adjustment by providing the ITC with discretion to limit its recommendations for relief to segments of an industry, where applicable, that could retain their competitive advantages if provided with temporary relief. The Administration bill thus forces the Commission to address the possibility of providing less than industry-wide relief.

In contrast, the House bill only slightly modifies current law. It requires the Commission to "determine the method and extent of import relief for the industry which is necessary to prevent or remedy the injury or threat [thereof]" and to take into account the industrial adjustment plan, if any, submitted at the request of the petitioner (§ 204(e)).

Unfortunately, the House bill makes submission of an industry adjustment plan optional (at the request of the petitioner). By contrast, the Senate bill appears to make development of the plan mandatory. Both bills properly permit relief under section 201 to be conditioned on compliance with the plan. By essentially requiring submission of such a plan, the Senate reinforces the emphasis in the statute on adjustment.

Additionally, the Senate bill sets forth several bases upon which relief measures may be reduced or terminated, including the achievement of their intended objectives, their threat to national security, or non-compliance by industry with its adjustment plan (§ 206(c)(4)). Making relief degressive should increase the incentive of industries to become competitive or to move on to other pursuits. The Senate bill also provides that once import relief has expired, the industry would not be eligible for import relief for another 10 years. The Senate bill makes a mockery of the purpose of providing "temporary" relief by adding an additional 5 years of assistance. However, by establishing standards for terminating relief and including the 10-year hiatus provision, the bill strengthens current law.

By essentially leaving many current provisions in effect, the House bill fails to emphasize the importance of positive adjustment. That is particularly important as the Congress seeks to improve the competitive posture of the U.S. industrial establishment. As difficult as it may be for some industries to recognize or admit, the orderly transfer of resources to other productive pursuits will eventually serve the national interest. The Senate bill makes explicit that some industries may never be able to compete and should begin making the transition to other, more productive pursuits. We hope the Committee will adopt measures like those in the Senate bill that change the focus of the escape clause from permanent import protection to positive long-term adjustment.

As part of the effort to encourage adjustment, the Congress should provide additional adjustment assistance to those workers, industries, and communities hurt by imports. We have long supported providing relief, which we believe should be funded like other programs out of the general revenues of the Treasury. Our members will prosper in this country only if our customers have jobs and disposable incomes. We think all workers should be given an opportunity to enjoy gainful employment again. Only government, however, can provide the financial support necessary to make programs work. Moreover, only the government can ensure that workers, industries, and communities do their share to commit to adjustment as a condition of receiving federal financial assistance. We thus encourage the Committee to adopt measures that will help those hurt by the expansion of world trade.

The funding of adjustment assistance should preferably be out of the general revenues of the Treasury. We would, however, be willing to support a small uniform "user fee" on all imports of up to 1 percent ad valorem to fund adjustment assistance if this measure is adopted subject to appropriate procedures under the General Agreement on Tariffs and Trade (GATT).

The key to a successful U.S. trade policy is to promote adjustment to a changing world economy. Establishing barriers to trade will reduce the overall national income; promoting adjustment will expand the U.S. production possibilities curve and promote the most dynamic sectors of the U.S. economy.

Substantial Injury Test

Under the House bill (and the Senate bill as well), the purpose of the Commission's investigation would still be to determine whether an article "is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article" (§ 204(a)) (emphasis added). Additionally, both bills maintain the definition of "substantial cause," which under present law is "a cause which is important and not less than any other cause" (§ 201(b)(4)). By retaining the substantial cause test and the current statutory definition, the Committee will ensure that the extraordinary relief available under section 201 will only be provided to those industries that demonstrate that imports are their most serious cause of injury.

As we indicated last year, we think it would be highly inappropriate to lower this standard, in particular to provide relief when a national or international economic recession was the cause of the injury suffered. We thus argued against proposals like H.R. 3777 that would have dropped "substantial" from the standard. Under those proposals, an industry could obtain relief if imports were only a cause of serious injury. We understand this was proposed in part to deal with a recession as a cause of injury. While designed to avoid this problem, it would undermine the whole purpose of the escape clause. In short, relief could be given, with adverse effects on consumers and the nation as a whole, without addressing the more serious problems of the industry.

Having been principally involved in the 1980 automobile case, we are particularly concerned about a lowering of the causation standard, as the Administration essentially has proposed. In our view, the ITC's decision in that landmark decision was eminently correct. The Commission had before it two unassailable facts: the U.S. automobile industry was facing severe economic difficulties and Japanese automobile imports had increased significantly. The key issue was whether Detroit's distress was due to imports or to other factors. After 46 hours of public testimony from 27 different groups over a week-long period, the Commission determined that imports were not a "substantial cause" of injury. Rather, economic conditions generally and a shift in consumer demand to more fuel-efficient automobiles were found to be more important in causing the slump Detroit was facing. We do not believe the standard should be changed simply so that cases like this will be easier to win.

We find particularly objectionable the Administration's proposed revision to section 201 "clarifying" that the causes of declining demand associated with an economic recession may not be treated as a single cause for purposes of determining whether imports are a substantial cause of injury to the domestic industry. It may be, as the Administration asserts, that "during a period of recession . . . an industry is most vulnerable to a surge in import competition." However, rather than ensuring that import relief will be "no more difficult to obtain in a recession," the Administration virtually ensures that any industry bringing a case during or following a recession will win it. As demonstrated by the 1980 automobile case, present law is adequate. The Commission has all the statutory authority it needs to make the type of assessment that the Administration would essentially force upon it.

Efforts to shortcut the steps for relief under section 201 would seriously erode our international obligations and turn the "escape clause" rationale on its head: instead of limiting restrictions on fairly traded imports to special cases of economic adjustment necessitated by imports, section 201 would become a blunt instrument of protectionism. Given the extraordinary consequences that flow from a positive determination, it is proper that a careful investigation be made of the health of the industry and the real effect of increased imports on that industry. We commend the Committee for retaining both the substantial injury test and the current definition of substantial injury in drafting H.R. 3 last year and hope it will retain those definitions in drafting positive trade legislation this year that promotes the national interest.

Presidential Discretion

We also are particularly concerned about the provisions in H.R. 3 that would curtail Presidential discretion in providing relief under section 201 by transferring all responsibility for imposing relief from the President to the USTR. The measure robs the President of his discretionary powers and thereby weakens an essential check on providing escape clause relief that could hurt the nation as a whole. We believe the statute ought to maintain the useful distinction between the ITC as essentially a factfinder and the President as a policymaker.

The President must take into account the efficiency of import controls in promoting industry adjustment, the cost to consumers of providing sector-specific relief, the likely retaliation of our trading partners, and the economic and foreign policy interests of the United States. As a practical matter, these issues already are subject to careful review by the full economic cabinet. Were only one Executive Branch office involved--in this case the USTR--the benefit of this broad ranging view would be diminished, if not lost. Moreover, by lodging final authority in the USTR, our trade policy could become overly responsive to the narrow interests of the international trade community, to the detriment of the overall national interest. Under our democratic system, we believe trade policy decisions must be made by the President, who is directly accountable to the public.

Like the House bill, the Senate bill also is objectionable because it severely limits Presidential discretion. If the Commission finds injury by a unanimous vote, the President must either adopt the ITC's recommendations for relief (or actions "substantially equivalent") or submit an alternative to the Congress for its consideration. If the Commission's vote is not unanimous, the President must take action either to help the industry to compete successfully or to transfer its resources to "other productive pursuits" (§ 205(b)(1)). The President would not be required to take action against U.S. national security interests or that would cause serious injury to a domestic industry.

The Senate provisions are preferable to the House ones, but still are objectionable and damaging to the extent the President's discretion is severely limited. Even when the Commission makes a unanimous injury determination in its role as factfinder, the President in his role as policymaker should have the discretion to avoid providing relief that could harm the nation as a whole. We fully appreciate the Congressional desire to limit the President's options, but we believe both the House and Senate provisions go too far.

If the Committee believes that some revisions must be made, we recommend that the limitations proposed in the Senate bill with respect to majority determinations also apply when the injury determination is unanimous. In this connection, the President also should have the authority to reject the recommended relief when the costs of the restrictions on consumers would substantially outweigh the benefits to the domestic industry. The Committee might adopt language, as it did last year with respect to section 301, providing the President with discretion not to take action that "would result in United States economic interests being more adversely affected if action were taken than if not . . ." (§ 301(a)(1)(8)(IV)). Alternatively, Presidential discretion should be limited (as in the Senate bill) only when the Commission makes a unanimous injury determination and makes a unanimous recommendation on the type of relief that will help the injured industry become competitive again.

Conclusion

We hope that in developing positive, bipartisan trade legislation, the Committee will reaffirm the nation's commitment to free and fair trade and those policies that have helped the United States to prosper since World War II. The Congress must avoid the temptation to pass sector-specific or country-specific legislation designed to shield domestic industries from legitimate foreign competition. We recognize that increased competition will force structural adjustments in our economy. In developing measures to help workers, industries, and communities to adjust to import competition, the Congress should provide assistance that emphasizes adjustment. On balance, we believe elements of the Senate bill are more likely than the provisions in the House bill to help industries under section 201 to adjust to import competition. We thus hope the Committee will consider measures like those in the Senate bill when it marks up H.R. 3.

Thank you.

STATEMENT OF JAMES J. CONNER, EXECUTIVE VICE PRESIDENT, MOTOR & EQUIPMENT MANUFACTURERS ASSOCIATION [MEMA]

Mr. CONNER. Good afternoon, Mr. Chairman, and members of the subcommittee.

My name is Jim Conner and I am executive vice president of the Motor & Equipment Manufacturers Association. Established in 1904, MEMA currently services more than 750 U.S. manufacturers of motor vehicle parts, accessories, and equipment. MEMA is unique among American automotive associations in that we represent only companies manufacturing automotive products in the United States. Our member-companies range in size from small, family owned firms to the largest multinationals. Although the majority of our members are U.S. owned and operated, a number of our subsidiaries are foreign corporations that manufacture in the United States.

The primary concern of MEMA is the continued existence of a sound, competitive domestic motor vehicle products manufacturing industry.

With those thoughts in mind, I will address only a few of our major concerns.

Mr. Chairman, you may recall having met with the Automotive Presidents Council last month here in Washington. You prefaced your comments by stating that a major problem, if not the major problem, hampering efforts to improve the competitiveness of American industry is the tremendous Federal budget deficit. The subcommittee is obviously well aware of the serious threat that continued deficits pose to our American industrial competitiveness. Rather than belabor this point, I simply state that our industry shares your concern and fully supports your objectives.

Further, the association supports this committee's efforts to strengthen intellectual property rights, especially in the elimination of an economic injury test and the question of patent infringement. The requirement that a victim company be part of an established U.S. industry and operated in an efficient and profitable manner seems akin to requiring that a robbed man prove he was rich before he was robbed in order to determine if the robbery was a crime. Theft of proprietary information is theft plain and simple. Patent infringement appears to us to be based upon specific laws which must be enforced.

When focusing on the U.S. motor vehicle products industry, it is important to note that over 90 percent of production is destined for the North American market. Historically, when export markets have reached a significant size, American companies have invested in local manufacturing. In some cases, this investment has been mandated by market restrictions. As a result, American companies manufacture vehicle parts throughout the world. Thus, for our industry, the first priority is the domestic market. The world's largest is the automotive parts battleground. It is this area I will address today.

We have become increasingly concerned by State programs designed to encourage foreign and in particular Japanese investment in U.S. production. Our concern is not so much centered on the investment itself, as on the incentives that States offer these manufacturers. Unfortunately, individual States have become involved in bidding wars for foreign direct investment. The prime targets have been Japanese car plants followed by their suppliers. States typically provide a wide range of grants and infrastructure loans. Counties and municipalities are involved by providing tax abatements often worth many millions of dollars, and other subsidies.

Foreign direct investment employs foreign support staff and uses greater quantities of foreign imports than domestic manufacturers.

In the short term, these plants may create some jobs. Unfortunately, with local and State subsidies, these facilities will ultimately take market share from U.S.-owned firms and serve to reduce overall employment.

Without investment incentives, these foreign-owned subsidiaries represent aggressive, but legitimate competition. With State subsidies, these companies become a government-supported threat to an efficient American industry. As with foreign policy issues, the Federal Government must coordinate programs affecting international trade and foreign direct investment. Without such Federal oversight, individual States and localities will undermine any Federal Government strategies for enhancing American industrial competitiveness.

According to a recent issue of the industry newsletter, Automotive Parts International, some $2.6 billion in parts were imported into FTZs during 1986. Approximately $2 billion in parts were imported from Japan.

Yet, few finished vehicles are ever exported from the United States.

Even with the establishment of special-purpose subzones in 1952 which made large-scale manufacturing within a zone possible, the fact remains that the original proponents of FTZs never intended for zones to develop into mechanisms for evading import duties. Clearly, the foreign trade zone program needs to be reevaluated in light of current usage.

MEMA has long supported and continues to support the integration of the United States and Canadian automotive markets and encourages the objectives of the current United States/Canada free trade talks. However, since the first steps to integrate the United States/Canadian market were taken, a number of market characteristics have changed, primarily foreign-owned manufacturing in North America.

MEMA believes that a more precise definition of what constitutes a North American product must be developed.

MEMA believes that a redefinition of North American content should specify a physical content level as part of the rule of origin or establish a content level high enough to ensure adequate use of locally produced goods. This change would prevent both vehicles and subassemblies that are virtually entirely manufactured outside North America from being imported duty-free under the guise of U.S. or Canadian products.

In conclusion, we would like to thank the subcommittee for this opportunity. Philosophically, MEMA believes that the ultimate solution to our trade differences with both Japan and Canada will come from company-to-company and industry-to-industry discussions. But by working in concert, government and industry can achieve excellent results.

MEMA is pleased to be now working with the Department of Commerce in establishing a representative office in Tokyo for our industry. The involvement of the Congress and industry in the MOSS talks further illustrates the point of cooperation.

Similarly, we believe that government and industry should work together to resolve differences hindering the United States-Canada talks. MEMA greatly appreciates the efforts of this committee to examine issues important to our industry and in its desire to seek solutions in cooperation with industry.

Thank you.

[The statement of Mr. Conner follows:]

STATEMENT OF JAMES J. CONNER, EXECUTIVE VICE PRESIDENT, MOTOR & EQUIPMENT MANUFACTURERS ASSOCIATION

Good Morning, Mr. Chairman and members of the Subcommittee.

My name is Jim Conner and I am executive vice president of the Motor & Equipment Manufacturers Association. Established in 1904, MEMA currently serves more than 750 U.S. manufacturers of motor vehicle parts, accessories, and equipment. MEMA is unique among American automotive associations in that we represent only companies manufacturing automotive products in the United States. Our member-companies range in size from small, family-owned firms to the largest multinationals. Although the majority of our members are U.S.-owned and operated, a significant number of our companies are the subsidiaries of foreign corporations that manufacture in the United States.

The primary concern of MEMA is the continued existence of a sound, competitive domestic motor vehicle products manufacturing industry. Our competitiveness is inextricably linked to our suppliers, to the automakers, to wholesalers and distributors, and to retailers and service garages. Therefore, in the time remaining, I would like to highlight some concerns of our industry that MEMA believes threaten not only our manufacturers, but also the smooth operation of our open and competitive market.

Mr. Chairman, you may recall having met with the Automotive Presidents Council last month here in Washington. You prefaced your comments by stating that a major problem, if not the major problem, hampering efforts to improve the competitiveness of American industry is the tremendous federal budget deficit. The subcommittee is obviously well aware of the serious threat that continued deficits post to America's industrial competitiveness. Rather than belabor this point, I will simply state that our industry shares your concern and fully supports your objectives.

Further, the Association supports this committee's efforts to strengthen intellectual property rights. MEMA supports the elimination of an economic injury test in relation to patent infringement. The requirement that a victim company be part of an established U.S. industry and operated in an efficient and profitable manner seems akin to requiring that a robbed man prove he was rich before he was robbed. Theft of proprietary information is theft plain and simple. Unlike an import injury case where demonstration of a viable U.S. industry is relevant, patent infringement appears to us to be based upon specific laws and should be enforced as such.

When focusing on the U.S. motor vehicle products industry, it is important to note that over 90 percent of production is destined for the North American market. Historically, when export markets have reached a significant size, American companies have invested in local manufacturing. In some cases, this investment has been mandated by market restrictions. As a result, American companies manufacture vehicle parts in Brazil, Mexico, Europe, Australia . . . in effect, throughout the world. Thus, for our industry, the first priority is the domestic market and it is this area I will address today.

FOREIGN DIRECT INVESTMENT AND STATE INCENTIVES

MEMA has become increasingly concerned by state programs designed to encourage foreign, particularly Japanese, manufacturers to invest in U.S. production of automotive products. Our concern is not so much centered on the new investment itself, as on the incentives that states offer these manufacturers. Unfortunately, individual states apparently have become involved in bidding wars for foreign direct investment. The prime targets have been Japanese car plants followed by their suppliers. States typically provide training grants, infrastructure development (both onsite and offsite) grants, and more recently, cultural transition assistance. The last refers to grants given to establish educational and cultural programs for the dependents of Japanese executives transferred to the U.S. subsidiary. Counties and municipalities frequently provide tax abatements, in many cases worth several million dollars, and supplemental financing for infrastructure development.

State competition for foreign investment has become a political tool of state governors who hold that new foreign investment offers "new employment", but investment to increase productivity at existing plants costs jobs. MEMA contends that foreign direct investment employs foreign support staff (design and engineering staff, for example) and uses greater quantities of foreign inputs. In the short term, these plants may create jobs. Unfortunately, with the advantages of state and local assistance, these facilities will ultimately take market shares from U.S.-owned firms and reduce overall employment. Without investment incentives, these foreign-owned subsidiaries represent aggressive, but legitimate competition. With these state subsidies, these companies become a threat to an efficient American industry. As with foreign policy issues, the federal government must coordinate programs affecting international trade and foreign direct investment. Without such federal oversight, individual states and localities will undermine the federal government's strategies for enhancing American industrial competitiveness.

FOREIGN TRADE SUBZONES

States also attract new investment by promising support for foreign trade subzone applications. Auto assemblers make the greatest use of FTZ's. According to a recent issue of the industry newsletter, Automotive Parts International, some $2.6 billion in parts were imported into FTZ's during 1986. Approximately $2 billion in parts were imported from Japan in this way. Yet, few finished vehicles are ever exported from the United States. In examining FTZ legislative history, it appears that auto manufacturing was never intended as a major zone activity. During hearings held on the zones during 1948, the department of Commerce went so far as to state, we "cannot conceive of Mr. Ford wanting to establish his automobile factory in such a location." Even with the establishment of special-purpose subzones in 1952 which made large-scale manufacturing "within" a zone possible, the fact remains that the original proponents of FTZ's never intended for zones to develop into a way of evading import duties. Clearly, the foreign trade zone program needs to be re-evaluated in light of current usage.

U.S.-CANADA TRADE

MEMA has long supported and continues to support integration of the U.S. and Canadian automotive markets. The Association believes that a unified market is in the best interests of both countries. Therefore, MEMA fully supports the objective of U.S.-Canada Free Trade talks.

However, given changes in the North American market since the first steps were taken toward the full integration of our two automotive industries, certain issues should be considered before approving duty-free trade.

The recent increase in foreign-owned manufacturing in North America has changed certain characteristics of the market. MEMA believes that a more precise definition of what constitutes a "North American" product must be developed. In the past, a general 50 percent North American content level was sufficient because North American automakers in practice purchased primarily North American components for assembling their vehicles. The growth in Japanese and Korean automotive investment has changed this characteristic. These manufacturers, in practice, source components primarily from their traditional suppliers located in their home countries. Given the current definitions of a North American or of a Canadian good, these automakers can meet the content requirements without using a significant quantity of North American product. Rather, these companies meet content levels through process-related costs such as labor and shipping. MEMA believes that a redefinition of North American content should specify a physical content level as part of the rule of origin or establish a content level high enough to ensure adequate use of locally produced goods. This change would prevent both vehicles and subassemblies that are virtually entirely manufactured outside North America from being imported duty-free as U.S. or Canadian products.

In conclusion, I would like to thank the Subcommittee for this opportunity to present some of our industry's views on a wide range of issues. Philosophically, MEMA believes that the ultimate solution to our trade differences with Japan and

Canada will come from company-to-company and industry-to-industry discussions. But by working in concert, government and industry can achieve excellent results. MEMA is pleased to be working with the Department of Commerce in establishing a representative office in Tokyo for our industry. The involvement of the Congress and industry in the MOSS talks further illustrates this point. Similarly, we believe that government and industry should work together to resolve differences hindering the U.S.-Canada talks. MEMA greatly appreciates the efforts of this committee in examining issues important to our industry and in its desire to seek solutions in cooperation with industry. Thank you again for this opportunity.

Chairman GIBBONS. Ms. Hoffman.

STATEMENT OF LINDA J. HOFFMAN, VICE PRESIDENT, AUTOMOTIVE PARTS & ACCESSORIES ASSOCIATION [APAA]

Ms. HOFFMAN. Thank you. I am Linda Hoffman, vice president of the Automotive Parts & Accessories Association—APPA.

We represent about 900 U.S. parts manufacturers who make parts and accessories, as well.

We have a full statement, which I assume will be included in the record. I will, in the interest of time, give a summary statement.

As we sit here today discussing our industry' survival and how it hinges on prying open Japanese parts markets, round four of the MOSS talks has just concluded. Unless these negotiations succeed in breaking through the shell that surrounds the tight Japanese car maker and supplier families, I am afraid we are going to face a wholesale loss of American industry profits, jobs and technology to the Japanese.

Let me summarize some of the wrenching transitions taking place in our industry.

With Big Three car production only a shadow of its former self, and almost no U.S. car exports pulling American replacement parts behind them, demand for our products is down sharply.

Direct imports and captive imports, with little U.S. content are taking bigger market shares and supplanting domestic output. Japanese transplants, their car assembly operations here, and U.S.-based joint ventures, using less than 20 percent local parts content, are displacing cars that heretofore used better than 90 percent U.S. parts.

Hidden under the hoods of what was once called the all-American car, is a growing percentage of foreign sourced parts. We call them the invisible imports.

Japan's lock on the original equipment market in Japan and the United States bars aftermarket sales not only here but globally.

Concerning the crucial MOSS talks, APAA offers the following observations:

One: the United States needs to push for Japanese reinstatement of the principles of the 1980 agreement that took place between our two governments. That agreement included a definition of the problem. The problem, quite simply, is closed original equipment and replacement parts markets. That agreement and its principles are just as valid today as they were in 1980, and the agreement's agenda for remedial action is just as timely. The United States should focus on two objectives: one, the removal of structural impediments to original equipment sales, and two, access to the global aftermarket for Japanese cars. With the reinstatement of these principles, both nations effectively would address all market access concerns wherever Japanese cars are built or sold.

Two: Since private, not government, barriers are at issue, U.S. sales targets and timetables are vital to measure progress. Regardless of how we set the benchmarks, reciprocal market access must be the ultimate objective, and sales monitoring should continue until Japan's market opening measures succeed.

Three: Moves by transplanted original equipment manufacturers to encourage relocation of their supplier families could shut the door permanently on American parts sales. They are anything but market opening gestures. U.S. discouragement of further investment we believe should be a corollary to our top objectives regarding market access. The migration can be averted if the Japanese car companies operating here show good faith on opening original equipment markets and turn to existing American sources.

Four: The Japanese need to be cautioned against using any kind of tactics in these MOSS negotiations that deflect attention from the real problems of closed original equipment and replacement parts markets. After all, the Japanese admitted these problems existed as early as 1980. Moreover, the independent studies show, and I think the Japanese car companies know, that there are highly competitive U.S. manufacturers in every automotive product category. Our U.S. market is about as open as theirs is closed. APAA urges nonprotectionist steps to end government subsidization of foreign automotive suppliers.

Among those approaches, a congressional push may be needed to put the Federal house in order on the Japanese supplier investment issue. Market facts should convince Federal and State leaders that by encouraging excess capacity to serve a flat market, they are helping foreign firms displace the market share of existing firms.

If the States persist, legislation should be considered to ban the use of Federal funds for this purpose.

Two: We also need to consider holding the line on foreign trade subzone grants for auto making until we can see better where they serve the public interest. We are convinced they do not.

Japanese car companies here and their home suppliers now benefit the most from these subsidized parts imports. The FTZ Board's guidelines for subzone applications could form the basis for a public interest evaluation, and we urge their adoption as actual rules.

At the same time, we would urge congressional consideration of legislation that sets a strict public interest standard in terms of the national economic interest; and subjects the subzone application process to the Administrative Procedures Act.

Three: The auto pact's duty-free access between the United States and Canada for original equipment shipments is being abused by unintended third party beneficiaries, and we think it demands reevaluation.

Any removal of aftermarket tariffs, without first clearing away Canadian domestic content/production rules and duty remission schemes, would invite a duty-free blitz on our $100 billion aftermarket.

Whether there is free automotive trade or modified pact, we urge the creation of safeguards to prevent foreign suppliers from making either nation the base of a wholesale duty-free launch on the other market.

As Under Secretary Smart stated, the Japanese original equipment manufacturers—the car companies, if you will—who benefit the most from open U.S. markets could lose the most, unless Congress is satisfied that parts markets are opening and there are bottom line results.

Access to the huge U.S. market is the ultimate leverage. We look forward to working with this committee to shape legislation that uses that lever to pry open those markets.

Thank you very much, Mr. Chairman, and thank you and the members of your committee and subcommittee for their interest in the auto parts issue and for following it so closely and being of so much assistance to us.

[The prepared statement follows:]

STATEMENT OF

LINDA J. HOFFMAN

VICE PRESIDENT

FOR THE

AUTOMOTIVE PARTS AND ACCESSORIES ASSOCIATION, INC.

Mr. Chairman and Members of the Committee:

I am Linda Hoffman, vice president of the Automotive Parts and Accessories Association (APAA). Thank you for this opportunity to meet with you today to discuss the U.S. parts industry's trade concerns. Moreover, I will propose legislative options that could specifically challenge parts trade injustices and enhance U.S. auto parts industry competitiveness. For the Committee's review and use, I have attached as Exhibits A and B a detailed discussion of the scope and nature of industry's trade problems, and APAA policy recommendations, respectively.

As the representative of nearly 1,000 American automotive product suppliers, APAA knows that even the most competitive suppliers are threatened by trade distorting practices of foreign governments and businesses that block the use of U.S. parts in building and servicing the foreign-made cars that now dominate many third markets and continue to increase their penetration of the U.S. market.

As a founding member of the pan-industry Automotive Products Export Council (APEC), we have worked long and hard with four other major automotive component trade associations to build American parts export opportunities in all markets where cars are built and sold.

Nowhere is this more important than with Japan, the car builders for the world. It is ironic that as we testify how our industry's survival hinges on American success in prying open Japanese parts markets, nearby, top negotiators of both countries are discussing U.S. access to those markets. As the fourth round of auto parts Market Oriented, Sector Selective (MOSS) talks concludes here today, with a meeting between Japanese negotiators and U.S. industry advisers, American parts makers face the prospect that left unchecked, Japanese auto maker/supplier families could control more than 50 percent of the content of all cars sold in America by 1989.

Unless MOSS succeeds in breaking through the shell that surrounds cozy Japanese OEM/supplier families, we face the wholesale export of our industry profits and jobs to Japan. By UAW estimates, Japanese practices by 1990 could cost 500,000 American auto making and supplier jobs, with two-thirds lost permanently in the supplier sector.

If allowed to compete, American OE producers could develop new Japanese customers to supplant traditional Detroit contracts. The same holds true in the world's emerging auto making markets, where a host of domestic content rules, export performance requirements, and other barriers block U.S. parts sales. I will recommend policies that APAA believes are essential to see that American parts suppliers gain their fair share of the global auto industry.

Background of Industry Deficit

In 1982, the U.S. automotive supplier industry produced its customary trade surplus. That year's $1.5 billion surplus was the last time that American industry exported more parts and accessories than the nation imported. By 1985, America was running a staggering $6.9 billion deficit in automotive parts and accessories trade.

What went wrong? There are a number of factors. Some countries have used high tariffs to keep out U.S. auto parts, while their growing parts industries enjoy free access to the vast American marketplace. Others use non-tariff barriers such as domestic content and export performance requirements to block parts exports, while making the U.S. market the major target for their finished vehicle and parts exports.

And, in the case of trade with Japan, which contributes the lion's share of red ink -- $5 billion in 1985 -- the impediments are structural -- tight car maker/supplier relationships--that block American parts sales.

In a tired but true phrase, we must have fair trade as well as free trade. The U.S. market is open: our trading partners' markets are not.

Even when we had large surpluses with the world, we ran up huge imbalances with Japan. We contend that our deficit with Japan is not caused by the lack of price competitiveness on the part of U.S.-made products. In fact, the widening gap in parts trade shows that the weakened dollar has had little impact on Japanese car companies' auto parts purchasing decisions for plants here and abroad. Nor is the problem rooted in the alleged deficiencies of U.S. quality or delivery.

Rather, the fundamental cause is Japan's longstanding policies and practices that encourage exports and block U.S. automotive product imports. Following these policies, Japanese auto makers and parts suppliers could control 50 percent of the content of all cars sold in America by 1988, through imports, transplanted production, joint venture "hybrids," and more Japanese parts under the hoods of remaining Big Three output.

Commerce Secretary Baldrige once described the Japanese model for industry development, and I believe it applies to the development of Japan's auto making and parts supplier industries. As he put it, the practice is to (1) protect their industry from infancy through a strong growth period, (2) make it strong with subsidies, and (3) turn it loose on the world and call it "free trade."

The Need for the Automotive Supplier Industry

Automotive supplier industry firms produce parts, accessories, tools, equipment and supplies for consumption in the OEM and consumer markets. It is the consumer replacement parts markets, the aftermarket, where our industry makes its greatest profits and where most of our members' products are sold.

The aftermarket is vital to the nation's economy. In fact, the parts industry is twice as large as auto making, and is a mainstay of American output, employment, exports, and defense capabilities.

Yes, Mr. Chairman, we are talking about jobs and the ability to defend ourselves, remembering that during past wars the U.S. automotive industry truly was the arsenal of democracy.

How The Aftermarket Works

Let me tell you briefly how our industry works. In America, cooperation between suppliers and Original Equipment Manufacturers (OEM's), or car makers, is marked by several characteristics. OEM's provide early product design information to the supplier and order a base volume of production. Suppliers produce not only for the auto makers but also for aftermarket distribution in dealer networks and independent outlets, a factor that keeps costs low and consumer prices very competitive.

As a car ages the aftermarket picks up the service load from new car dealerships. Once new car warranties expire it is the independent aftermarket that provides nearly all of the service on these cars. The aftermarket also gives consumers a variety of choices in service facilities and sales outlets for do-it-yourselfers.

Parts made for OEM's are saleable worldwide, a factor that helps the U.S. trade balance. Of course, a number of parts do not require an OEM/supplier relationship, e.g., chemicals and accessories. Americans already compete vigorously in the market for fast moving products, parts that do not require specialized tooling or development costs for producers that already make similar products for domestic application. But, without the ability to produce the replacement parts for cars operating in foreign markets, we cannot compete for exports.

And, we are denied that ability by Japan's approach to the world automotive market. Japan would like free trade to mean a one-way street, allowing them to sell to us, only to find that they bar us from their original equipment and replacement markets. Japanese firms compete with us worldwide and enjoy the competitive edge of selling to the growing worldwide aftermarket for their cars, a lucrative market that is difficult for us to enter.

Despite U.S. inability to penetrate the $50 billion plus Japanese parts markets, the open U.S. is Japan's major growth market. Our market is essential to the future prosperity of a Japanese automotive industry that faces a maturing market at home. It is not that our market is growing significantly -- forecasters see an 11.5 million sales market in 1989 versus 11 million in 1985. Rather, Japan is moving to fill a major market vacuum left by American car makers. Having learned that less domestic production actually means more profit, our car makers have shed unprofitable small car lines. The U.S. move has paved the way for peaceful coexistence and profitable partnership between auto making industries.

Japan's gameplan goes beyond scoring sales growth. Rather, their objective is to wrest control of the real prize in the U.S. automotive industry, the automotive supplier industry, representing two-thirds of industry riches. Their plan has run into the wall of U.S. industry and government resistance, and insistence, on fair access to Japanese OE and replacement parts markets wherever Japan builds and sells cars.

When Japanese imports grazed the two million sales mark in 1980, America's auto makers and government blew the whistle and imposed a so called voluntary restraint agreement (VRA) on Japanese exports. Responding to U.S. political pressure, Japan sharply cut 1981 imports to 1.68 million units. With U.S. parts export sales to Japan hovering around $100 million at that time, the American content in Japanese imports was -- and still is at $200 million -- less than one percent.

Ironically, the car makers who wanted the VRA for breathing room to develop the right small car product mix, never turned the corner on making a profitable small car. All U.S. car makers were happy to see the VRA die in 1984. This ushered in the era of captive imports, made for hire by companies in which U.S. car firms bought substantial equity holdings. The Big Three already have moved on to South Korea, Mexico, Taiwan, Brazil and elsewhere with similar investments. By 1989, captive imports will account for more than 1 million sales by the Big Three, with cars bearing little more American content than the name itself.

Phase Two

As Detroit honed its new survival strategy, the Japanese moved to phase two of their plan -- the transplanting of Japanese vehicle assembly operations onto U.S. soil. This second wave was borne of a plan to skirt the political thicket of quotas and the perennial domestic content debate. While substantial Japanese investment went into sinking the roots of these vehicle assembly plants, those roots remain shallow and have not tapped deep into U.S. supply lines.

Indeed, American firms need not travel to Japan to face rejection, for they can find it right in Japan's transplants. While we are pleased for every firm that has won contracts, we would caution that little of what we define as parts is being sourced by American-owned firms. Many of the products are generic--such as steel, glass, carpeting, sealants--and don't buy us anything in aftermarket sales or export opportunities. Virtually every major system, from engines and transaxles to brakes and electrical, comes from Japan.

These practices run counter to commitments made in Japan's 1980 Orderly Marketing Agreement (OMA) on auto parts trade. That agreement recognized the importance of what we call "linkage." Linkage is the relationship between OE and aftermarket manufacturing that allows a firm to produce replacement components for engines, transaxles, and a host of other hard parts because the OE tooling already is in place. Denied linkage over the last seven years, U.S. firms have not achieved the significant gains in sales to the U.S. aftermarket for Japanese cars forecast by Japan at that time. Nor, have they been able to contest foreign aftermarkets for Japanese-made cars.

Despite sketchy information on transplants' local sourcing, top Japanese industry analysts peg the domestic content of parts and components used in these transplants at a scant 20 percent.

Japanese OEM's contend that these U.S. operations will displace imports, yet industry projections show that Japanese transplants' 1989 output will clearly supplement imports with more than one million cars. This further displaces traditional domestic production.

As with the first wave, there is a way for the Big Three to profit. The strategy is to join their partners in U.S.-based joint ventures. Projected for American suppliers is only a 20-30 percent domestic content share for the nearly 350,000 hyrbids produced in 1989.

Third Wave

Even that meager share would prove much higher than American-owned firms could gain in the face of the third, and by far worst, wave: the migration of more than 300 Japanese auto parts makers to the U.S. by 1988. When they arrive, all remaining distinctions will blur, and the "domestic content" used in transplant and hybrid production will soar. And, these Japanese suppliers will compete with U.S. parts makers for the U.S. aftermarket while expanding their already extensive supply of components to the Big Three.

Finally, let me note what we term the invisible import. Hidden under the hoods of the all American car is a growing percentage of parts and components sourced by foreign owned suppliers. By 1989 these imports could rise to 20 percent or more of each domestic car, effectively making one of every five cars an invisible import.

Japanese Takeover Would Prove Disastrous

Families of Japanese auto makers, suppliers and banks long have planned to own the American automotive supplier industry, the largest in the world. Ironically, it was many American voices -- not APAA's -- who invited the Japanese -- in the hopes of easing bilateral trade frictions and reducing trade deficits. Should the last wave hit as a full frontal assult on American industry, we believe that a large part of the ownership of this bulwark of America's economy would change hands.

Would it make any difference if well respected Japanese car companies and suppliers controlled the content of the majority of cars sold in America? After all, it would trim back the vast and rapidly widening $5 billion parts trade deficit, wouldn't it?

APAA believes that a Japanese takeover would prove disastrous for America's economy. It would help curb the parts trade deficit, but at the cost of further deterioration of our balance of payments account with Japan. Billions of dollars of industry profits would move to foreign hands, while American entrepreneurs and equity holders would suffer huge losses.

But the sacking of U.S. profits would not end there. Here are some examples of what lay ahead for other major American sectors: Japanese bankers will finance the new plants and Japanese construction contractors will build them; Japanese capital goods will equip them; and a good deal of the steel will be imported. Japanese investment, like trade, means keeping the money in the family.

Would there be any tradeoff in the way of more competitive car pricing? Perhaps for a season, until stronger control is achieved. Then it will be back to whatever price the market will bear. This is evidenced most clearly during the many years when the Japanese had a 25 percent currency advantage, yet never passed on any competitive price breaks. And, whatever remained of traditional American car producers would not be seen so much as competitors, but rather as customers, for Japanese car makers' supplier families. As for the aftermarket, parts prices could soar as Japanese OEM's tighten their grip over a greater number of parts available solely through their distribution networks.

If that sounds inflationary, consider the strain to be placed on scarce national resources as the Japanese superimpose a brand new supplier network on top of a viable American network. This costly waste will force the deferral of many genuine capital needs.

Employment and Security

As noted above, closed Japanese parts markets alone, could cost 500,000 American auto making and supplier jobs by 1990.

Since the U.S. new car market is flat -- and projected to remain so throughout this decade -- each Japanese import and each car assembled here by transplanted Japanese OEM's will displace a unit of domestic OEM production. Cars now made with 90 percent plus domestic content will be displaced by transplant production that uses less than 20 percent American content. Imports with little if any U.S. made parts, round out the bleak picture.

In fact, a recent UAW study shows transplanted Japanese assembly plants providing only one-fourth the job benefits that a U.S. plant gives, because the parts are made in Japan. And the same will hold true for transplanted component manufacturers who keep high value added subcomponent manufacturing in Japan. As assemblers of subcomponents, they provide only 35 to 40 percent of the jobs found in comparable U.S. parts manufacturing plants.

Since Japanese manufacturers' facilities are little more than assembly plants, a critical body of U.S. engineering and technical expertise is being exported. Critics have charged that key sectors of our economy could become "screwdriver" operations with "value added" functions performed in Japan.

Having considered these threats to the nation's economy, we also must reiterate the peril posed to national security. A weak, U.S. controlled supplier base would compromise the nation's industrial and military strength.

While pushing to pry open Japanese parts markets that hold the key to the future of the American automotive supplier industry, APAA and its APEC allies have insisted on a big picture approach to trade policy. This often involves scrutiny of other theaters of worldwide trade where Japanese industry is a major player.

Canada is the prime example. It is easy to see that we could easily slide into a serious deficit if Japanese, Korean and other foreign suppliers locate in Canada and gain duty-free Auto Pact access to U.S. markets. Those same firms would benefit further if any free trade agreement provided duty-free access to the vast U.S. aftermarket. APAA has insisted that the free trade talks address these and other parts trade issues.

Any success in dismantling trade distorting Canadian practices will energize the campaign to tackle domestic content rules, performance requirements and other barriers elsewhere. Nowhere is that more important than in emerging auto powers such as Brazil, South Korea, Taiwan and Mexico where American automotive suppliers must be able to help build cars, and supply the service parts for those vehicles, wherever they are sold. We must have fair trade as well as free trade.

Prompt action against the unfair trade barriers and practices of other nations and industries is needed to avoid a sequel of Japanese-style one-way trade.

Japan: any discussion of world parts trade must return to it. Decisions made there determine American access to OE markets wherever Japan builds cars. Getting U.S.-made OE on board, in turn, shapes U.S. access to the vast global aftermarket where Japan is the undisputed top car seller.

To go to the heart of the competitiveness debate, let me suggest a chart which compares the advantages of American suppliers with their Japanese competitors. In Japan's column, we could list: strong OEM/supplier relationships, lenient antitrust laws, and tax rebates on their exports. And those OEM's assembling cars here enjoy the use of Foreign Trade Zone (FTZ) subzones, attractive labor contracts, and a host of government grants and tax forgiveness schemes. In the American column, we have world-class competitors in every product category, some limited government involvement, and the MOSS.

With a great deal of Congressional help, we were able to bring Japan to the MOSS negotiating table, a goal that APAA committed 15 months to help industry attain. The MOSS forum now provides us an ideal opportunity to demonstrate the sound economic and political reasons for Japanese OEM's to purchase products outside of their supplier families.

MOSS Observations

Concerning the crucial MOSS talks, APAA offers the following observations:

1) The U.S. should ask Japan to reinstate the principles of its 1980 non-quota Orderly Marketing Agreement (OMA) on auto parts trade. The agreement's definition of the problem -- closed OE and replacement parts markets -- is just as valid today: its agenda for remedial action as timely.

The U.S. should focus on two top objectives: (1) removal of structural impediments to OE sales and (2) access to the global aftermarket for Japanese cars. Together, they address all market accesss concerns, wherever Japan builds and sells cars. We caution against permitting Japan to choose among lesser objectives, such as market promotion efforts, and claim success. With the reinstatement of the OMA principles, both nations effectively would have the same two primary objectives.

2) As Representatives Levin, Kaptur and others in Congress have noted, the fact that the transportation machinery MOSS talks primarily involve private business relationships, not governmental barriers, makes it especially important that the U.S. set targets and timetables for measuring progress.

The Japanese themselves in 1980 established a sound basis for measurement. With barely $100 million in U.S. purchases that year, Japan set a goal of $300 million in purchases for 1981, to be followed by significant increases thereafter. Six years later, the Japanese have barely passed the half way mark of the original target.

Since the 1981 target of $300 million in parts exports to Japan represented 16 percent of Japan's $1.8 billion in parts exports to the U.S., the same ratio could be applied to 1987 trade as a logical minimum for Japanese purchases from American owned suppliers. Given an average 33 percent growth rate in Japanese parts exports to the U.S. (1982-1985), 1987 exports will be at least $7.4 billion. Accordingly, it would be reasonable to expect that the minimum for Japan's 1987 purchases from American owned firms be set at $1.2 billion (16 percent of $7.4 billion), with a doubling in such purchases expected in each subsequent year until reciprocal market access is achieved.

Regardless of how the benchmark is set, the U.S. proposal should make reciprocal market access its ultimate objective.

3) APAA believes that the wave of Japanese supplier migration poses the gravest threat to the future of American owned parts makers. Transplanted Japanese suppliers intend to gain ground with the OEM transplants, the U.S. car makers and in the aftermarket. This will create overwhelming redundancy at a time when U.S. suppliers are particularly vulnerable.

Moves by transplanted OEM's to encourage relocation of their supplier families could shut the door permanently on American parts sales and are anything but market opening gestures. U.S. discouragement of further investment should be the corollary to our top objective of OE market access. The migration could be averted if transplanted OEM's show good faith on opening OE markets and turn to existing American sources.

4) Japan could attempt to stall the talks by raising specific cases of alleged poor U.S. supplier performance to justify their lack of U.S. parts purchases. If permitted, these tactics could deflect the attention from the real problem of closed OE and replacement parts markets, which Japan's government admitted as early as 1980. Moreover, independent studies show, and Japan's OEM's know, that there are highly competitive U.S. manufacturers in every automotive product category.

The U.S. market is as open as theirs is closed. The question of continued openness provides our ultimate leverage. APAA urges specific interim steps that we can take to end Japanese exploitation of that openness. None are protectionist: all would put an end to government subsidization of foreign firms.

1) A Congressional push may be needed to put the federal house in order on the Japanese supplier investment issue. The market facts should convince federal and state leaders that by encouraging new capacity to serve a flat market they are helping foreign firms displace the market share of existing firms. If the states persist, legislation should be considered to ban use of federal funds for such purposes.

2) Hold the line on new Foreign Trade Zone (FTZ) subzone grants for auto making, until we can see whether they serve the public interest. Japanese OEM transplants now benefit the most from the program, enjoying significant tariff savings on huge shipments of Japanese parts imports. The effect is to boost the competitiveness of Japanese parts imports at the expense of American suppliers and their workers.

In return for the hefty duty savings--parts are taxed at 2.5 percent car duty rather than the average 4-6 percent parts tariff--Japanese OEM's promised to increase their local sourcing. Other than buying from transplanted suppliers who set up shop next door to underused American suppliers, no boost in local sourcing is on the horizon.

The method for weighing the public benefits also needs revamping, from a parochial view of local/regional gain, to the big picture of potential consequences for the nation. The FTZ Board's guidelines for subzone applications could form the basis for a public interest evaluation, and we urge their adoption as rules.

At the same time, we would urge Congressional consideration of legislation that sets a strict public interest standard in terms of the national economic interests. We also advocate that subzone applications be subject to provisions of the Administrative Procedures Act, especially the public hearing requirement. These steps would build a framework for judging both prospective and existing subzones.

3) Duty-free access for OE shipments allowed under the U.S.-Canada Auto Pact has become a selling point to lure Japanese suppliers to Canada. This abuse by unintended third party beneficiaries demands our reevaluation of the Pact.

APAA has sought and gained the assurances of key negotiators that the U.S. would raise the Auto Pact and all other aspects of our automotive products trade relationship during bilateral talks. We warned that any elimination of aftermarket tariffs, without first clearing away trade distorting OE practices, would invite a duty-free blitz on our huge $100 billion aftermarket.

As longstanding opponents of U.S. domestic content legislation, we urge the elimination of Canadian domestic content and production safeguards. APAA opposes any effort to extend these trade distorting practices to all OEM's marketing cars in Canada, as has been proposed by many leaders of Canadian industry, labor and government. This move would spur foreign automotive supplier migration to Canada, where they gain duty-free access to the U.S.

APAA also objects to Canadian use of a duty remission program that grants duty relief on cars and/or parts in exchange for investment in Canadian auto making/parts making plants that export from Canada. Given duty free OE access to the U.S., the plan's net effect is to provide further rewards for foreign parts supplier investment in Canada.

Whether the U.S. and Canada move to a complete free trade agreement in all automotive products trade, or agree to modify the Auto Pact, we urge the creation of some safeguard to prevent foreign-owned suppliers from making either nation the base for a wholesale duty-free launch on the other market. One means of doing this might be to hold new to market North American firms to a scheduled phase-in, that limits the percentage of total production eligible for duty free treatment.

We have recommended actions which taken now in a nonprotectionist manner will demonstrate U.S. resolve to open markets for U.S. automotive suppliers.

Another Canadian duty remission program, now under U.S. government attack as an export subsidy, ties the value of vehicle duty remission to the value of Canadian content exported to the foreign-based auto maker, regardless of whether that content returns to Canada. Since this means that cars destined for other markets may carry Canadian content -- opening new markets to their aftermarket exports -- the program makes sense.

That is why the APAA/APEC Parts Purchase Incentive Plan was tailored after the Canadian plan. If Canada wins its fight to keep this facet of its duty remission program, we urge prompt enactment of our Plan. As the lever -- an economic incentive -- to pry open Japan's closed OEM's, we believe the Plan would create jobs, equip vehicle imports with American products and set off a chain reaction of growth in aftermarket sales.

The incentive to buy U.S. would be a dollar of credit against vehicle duty for each dollar of American product purchased by foreign based auto makers. And, best of all, it is a trade builder, not a trade blocker.

We believe that all of the actions discussed would be appropriate features for any comprehensive trade bill. We believe this is the time to craft legislation addressing auto parts trade problems. In particular, the enactment of provisions that identify barriers, set negotiating objectives, and create leverage tools, would boost industry competitiveness. It would bolster the current MOSS talks, provide for post-MOSS needs, and assist our campaigns to open other crucial markets.

In general terms, trade law reform should respond squarely to foreign practices that block our exports or target domination of our market. Then, Congress should push to make sure the laws are enforced.

The move toward trade law reform is an important part of a long awaited broad industrial policy integrating the needs of U.S. industry into that policy. In short, we need a cohesive and consistent approach to taxation, regulation, currency valuation, and deficit reduction. Getting more specific, our trade and tax experts should evaluate our competitors' tax systems and report how well the U.S. code stands up to global competition. The ordered march to a balanced budget together with the push for sound international monetary policy, gives us hope that the currently favorable yen:dollar relationship will last.

In our deficit reduction efforts, we should guard however, against counterproductive cuts. For example, Mr. Chairman, I was disturbed to learn that the budget ax was falling in the USITC's statistical reporting area. In light of the size and complexity of U.S. automotive parts trade, APAA urges the continued funding of this important government function. Reliable trade data is crucial to sound parts trade policy making.

Similarly, we direct Congressional and Administration attention to the important role of the Foreign Commercial Service (FCS). In terms of competitiveness, we should consider the FCS a key part of our front line, particularly when it comes to helping new to export companies.

Two things are needed: (1) replacement of the $5 million FCS budget shortfall, lost to the declining dollar; and (2) the maintenance of Department of Commerce (DOC) support for, and cooperation with, industry export promotion efforts through programs such as the Trade Fair Certification Program. On this latter point, we feel that given the budgetary constraints, DOC should support, rather than compete with, the strong trade promotion program which U.S. parts suppliers and their industry associations have built.

Concerning parts trade policy, APAA believes it is time for our industry to have its own policy voice at DOC. American OEM's and parts makers have widely divergent strategies and needs. Consider how domestic auto makers' growing reliance on foreign sourced parts and entire car lines, and their other strategies discussed above, contrast starkly with American suppliers' drive to export and be integrated into the global system.

Greater American parts sales, not car exports, offer the only realistic means to bridge the bilateral automotive trade gap. It is time for our industry to have its own policy voice at DOC. That autonomy not only is important to our dealings with Japan, but to the policies we develop to eliminate barriers and unfair practices in other major markets.

That is a huge task when we consider that foreign governments and business practices threaten to block American original equipment and aftermarket production for the import cars, which quickly could dominate 50 percent and more of the U.S. market.

The internationalization of auto making and parts production seemingly holds promise for everyone with competitive quality products. But, the unfair trade practices of foreign nations and their industries could exclude U.S. qualified suppliers from playing a major role.

U.S. auto makers will profit as they move small car production overseas and use more foreign components in cars built at home, but American suppliers lose sales both ways.

Japanese auto makers, whether they are assembling cars with Japanese-made components in the U.S. or in Japan -- and whether for themselves or for American car makers -- will be the biggest winners, as will their Japanese suppliers.

Conclusion

The emerging internationalization of the auto industry, moves by U.S. auto makers towards offshore sourcing of cars and parts, and the shrinking of U.S. auto maker output converge into critical challenges for automotive suppliers: they must export more, and they must become the local sources for Japanese OEM transplants.

We have proposed action that not only would avert a disaster for our industry, but actually could turn globalized auto production into an opportunity. Beginning with the MOSS talks -- backed by a strong package of political and economic reasons for Japanese OEM's to buy outside of their families -- all of our recommendations reach for the self-interest button that could lift trade barriers.

As Undersecretary Smart so aptly stated at the August opening session of the MOSS talks, Japanese OEM's who have benefited the most from open U.S. markets also stand to lose the most, unless Congress is satisfied that parts markets are opening and there are bottomline results. Access to the huge U.S. marketplace offers the ultimate leverage. We need legislation that can use that leverage to pry open other markets.

We are pleased that Congressional and Administration trade leaders know the truth about locked Japanese equipment markets here and abroad. We all can see the consequences of exporting supplier industry jobs and profits to Japan. APAA would not rest until we got MOSS, nor will we stop until our industry is tied into the internationalized auto industry, and our products enjoy the same free access that other nations' auto making and supplier industries enjoy here.

We are anxious to work with this Committee, the full Congress and the Administration on our proposals and the development of other viable solutions.

We appreciate this opportunity to review the U.S. auto parts industry's agenda for meeting all of the challenges and opportunities of global parts trade. We would be happy to answer any questions you may have.

Committee Note: Attachments A and B to this statement have been
retained in the committee files

Chairman GIBBONS. Would you explain a little more, Ms. Hoffman, of what you call a subsidization of these? Could you give us some examples?

Ms. HOFFMAN. With regard to foreign trade subsidies?

Chairman GIBBONS. U.S. subsidization of these foreign manufacturers.

Ms. HOFFMAN. Are you talking, Mr. Chairman, about the use of subzones, in particular?

Chairman GIBBONS. The subzones, and I guess you are talking about the use through industrial development bonds.

Ms. HOFFMAN. Exactly, and urban development, action grant money that comes from the Federal Government to the States, and through the States to the Japanese car companies and to their suppliers. They are used as lures to bring them here, to help off-set some of their costs in establishing a beachhead in the United States.

This is done, of course, with U.S. companies' money. I think perhaps you can understand their concern that this is being done at a time when U.S. firms are saddled with aging plants, and to some extent processes.

Chairman GIBBONS. I hope you all will make more noise about that. I have been trying to get rid of the IDB business for years. This is the first time I have heard they were used for that purposes. And urban development grants, they give them to my community, the most bustling community in the United States.

It doesn't make any sense. Those are two domestic programs where we can really save some money, and now you allege, and I believe, we are using them to subsidize foreign competition.

I hope the Appropriations Committee will pay some attention to that, and I hope the Ways and Means Committee will pay some attention to it.

There is no reason we can't get rid of those industrial development bonds except we have got clay feet around here, and there is no reason why we get rid of UDAG except everybody likes a little sugar now and then, and I guess that is what it is.

I have been interested in participating in the effort to assure that there is equal opportunity for American parts manufacturers to participate in this foreign investment or foreign-owned investment in the United States as a supplier on equal opportunity grounds, and I am putting a lot of my judgment on how well this comes out as to what type of legislation we have in the future in this area.

I hope it can be worked out by negotiations rather than requiring us to get involved in it. It seems to me we certainly ought to get rid of the UDAG grants and industrial bonds in this operation. That is the only observation I have.

Ed?

Mr. JENKINS. Thank you for your testimony.

Chairman GIBBONS. Mr. Levin?

Mr. LEVIN. Mr. Chairman, I have no questions, just a very brief comment.

I was for an hour at a meeting as an aftermath, Mr. Chairman, of the MOSS talks on auto parts, and I note the position expressed in this document by Ms. Hoffman and the other distinguished representatives—the statement on page 7 of Linda Hoffman's testimony: "The U.S. market is as open as theirs is closed."

That may be a bit of an overstatement, but I think it captures the essence of it. And to hear, Mr. Chairman, the representative of the Japanese Government in the MOSS talks indicate that there really is no problem of access to the market there, that their markets are as open as those in America, I must confess, astounds me, and I think that we just have to act to make sure that there is comparable openness in perception and in reality.

Thank you.

Chairman GIBBONS. I thank the panel.

The next panel is Electronic Industries Association, Information and Telecommunications Technologies Groups, Joe C. Culp, president, Telecommunication Group, Rockwell International Corp.; North American Telecommunications Association, Edwin B. Spievack, president; and Communications Workers of America, AFL-CIO, Morton Bahr, president.

STATEMENT OF JOE C. CULP, PRESIDENT, TELECOMMUNICATION GROUP, ROCKWELL INTERNATIONAL CORP., ON BEHALF OF THE ELECTRONIC INDUSTRIES ASSOCIATION, INFORMATION AND TELECOMMUNICATIONS TECHNOLOGIES GROUP

Mr. CULP. Thank you very much for having me back again. I am Joe Culp, president of Rockwell International Corp. Communications Group. I am testifying today on behalf of the Information and Telecommunications Technologies Group of EIA, Electronic Industries Association.

Approximately a year ago, I addressed this committee on one of the most critical trade issues that I think faces this country, and that is the issue of telecommunications trade. I would like to restate briefly why the enactment of appropriate telecommunications trade legislation is needed, and more importantly, is needed quickly. A year has passed since I testified previously, and the situation has deteriorated during that time.

At the beginning of 1984, the AT&T system was broken up through a judicial consent decree. Our market is now completely open, and the market of our trading partners is still largely closed.

The upheaval created by this divestiture has just begun to settle down, and now there are additional judicial actions which will further complicate this marketplace.

The markets of our trading partners consist largely of procurements by State-controlled monopolies, which operate the telephone companies in those countries.

These entities usually pursue an overt or de facto buy national policy. They buy from domestic suppliers except in those cases where the suppliers do not make the products that they want to buy, and thus, we are excluded for the most part from these largest of our foreign markets while our foreign competitors have been given free access to our own market.

Our industry is competitive. It has a record of innovation and technological leadership that is the envy of many of our trading partners. Many foreign producers, in fact, believe that they cannot be competitive on a world-wide basis unless they participate actively in the U.S. market, which is the largest of the markets of the world.

The current imbalance in market opportunities has created an international competitive crisis for our industry. Since the end of 1983, the balance of trade in telecommunications equipment has deteriorated drastically. Despite the competitiveness, export growth, and technological achievements of this industry, we moved from a surplus of $56 million in 1983, the last year before the AT&T divestiture, to a deficit of almost $2 billion in 1986, and this is despite the publicized success that we have had in so many of our negotiations.

I am particularly disturbed at the effect the current imbalance in market opportunities will have on our long-run competitiveness. While it is true that foreign companies are now locating plants in the United States and thus creating jobs for many of our people, the research and development efforts of these companies is still conducted primarily in the home laboratories.

In the final analysis, our success in research and development, more than anything else, will determine whether or not we can continue to compete. It is important to note that funds for this development come from the sale of products, and, therefore, the sale of products is essential to us to fund the research and development in which we engage.

The telecommunications trade legislation, which your subcommittee is considering, will help solve the trade problems which confront our industry.

We favor legislation which would direct the President to enter into negotiations for the purpose of eliminating foreign barriers to U.S. equipment services and investment.

If these negotiations do not result in market access for U.S. firms by some specific date, the President should be required to impose restrictions on the access of foreign suppliers to our market.

The prospect would put our trading partners on notice that we mean business, and the bill before the committee, H.R. 3, takes this basic approach.

The legislation that you are considering would not establish blanket protectionist tariffs for our industry, quantitative restraints or other restrictions or access to our market. Restrictions would only be imposed in those instances where foreign countries continue to refuse access to our suppliers. Even then, the foreign country could secure removal of any restrictions simply by agreeing to open its market. This bill is thus designed to combat foreign protectionism and not to protect our market.

Correctly, the bill does not single out any one country as solely to blame for the trade crisis in our sector. The problem we confront is attributable to protectionist practices and policies in most major industrialized nations, including not only Japan but other nations of the world, the European nations as well as Canada.

The telecommunications trade problem is a time sensitive matter. In our industry product life cycles are very short. As I mentioned last year, our product life cycles are sometimes only 1 or 2 years before they are obsolete. A competitive reversal in any one product generation can foreclose a company from participating meaningfully in any future generations of that product. Our firms at the present time are competing at a distinct disadvantage.

Because of the critical time element, we urge the Congress to act quickly on appropriate remedial legislation and that under any legislation no more than one year should be allowed for Presidential negotiations.

We, of course, would be happy to provide whatever assistance necessary to the Government negotiators to assist them in complying with this timetable.

I represent an industry which has continued to grow and invest and spawn new companies. We at Rockwell International, for example, invest about 11 percent of our sales dollars in research and development and about 7 percent in new capital investments. That is not unusual for this industry.

We are headed for serious difficulties if the trade and market access issues which we have addressed here today are not resolved. A trading order in which our market is open and those of our trading partners remain closed is inconsistent with the economic well-being of this industry and contrary to the principles of free trade which underlie this country's trade policy.

The bill before you addresses the current disparity in market access opportunities which exists. If enacted, we believe it offers the prospect of a more open and truly competitive world market for telecommunications equipment.

Thank you very much.

[The statement of Mr. Culp follows:]

STATEMENT OF JOE C. CULP, PRESIDENT, TELECOMMUNICATIONS GROUP, ELECTRONICS OPERATIONS, ROCKWELL INTERNATIONAL CORPORATION, ON BEHALF OF THE INFORMATION AND TELECOMMUNICATIONS TECHNOLOGIES GROUP OF THE ELECTRONIC INDUSTRIES ASSOCIATION

Mr. Chairman, I am Joe Culp, President of Rockwell International Corporation's Telecommunications Group. I am testifying today on behalf of the Information and Telecommunications Technologies Group (ITG) of the Electronic Industries Association.

Approximately one year ago, I addressed this committee on one of the most critical trade issues facing this country: Crisis in Telecommunications. I would like to restate briefly for you why the enactment of appropriate telecommunications trade legislation is needed, and needed quickly. A year has passed since my last testimony, and the situation has deteriorated greatly in that time.

At the beginning of 1984, the AT&T System was broken up through a judicial consent decree. Our market is now completely open to foreign telecommunications equipment imports and investment.

The upheaval created by the divestiture has just begun to settle down. And now we face additional judicial actions which will further complicate the marketplace of the United States, and facilitate the entry of additional foreign competitors.

On the other hand, the markets of most foreign nations with indigenous telecommunications equipment industries -- that is, all of our major industrialized trading partners -- remain largely closed to U.S. products.

In these countries, the market for equipment consists largely of procurement by state monopolies, which operate the national telephone, telegraph and data transmission systems.

These entities usually pursue an overt or de facto "buy national" policy, procuring equipment exclusively from domestic suppliers except for the few products those suppliers do not make.

Thus, we are excluded, from the largest foreign markets, while our foreign competitors have been given free access to our own.

Our industry is competitive. It has a record of innovation and technological leadership that is the envy of our trading partners. Many foreign producers believe that they cannot remain competitive on a world scale unless they participate actively in the American market, the largest in the world.

The current imbalance in market opportunities has created an international competitive crisis for our industry. Since the end of 1983, the balance of trade in telecommunications equipment has deteriorated dramatically. Despite the competitiveness, export growth, and technological achievements of our industry, we moved from a surplus of $56 million in 1983, the last year before divestiture, to a deficit of almost $2 billion in 1986.

I am particularly disturbed at the effect the current imbalance in market opportunities is having on our long run competitiveness.

While it is true that foreign companies are now locating plants in the United States and creating jobs, their R&D efforts are still conducted primarily in their home laboratories. In the final analysis our success in research and development, more than anything else, will determine whether or not we can continue to compete. Funds for this development can only come from product sales.

Telecommunications trade legislation, which your subcommittee is considering, will help solve the trade problem which confronts our industry.

We favor legislation which would direct the President to enter into negotiations for the purpose of eliminating foreign barriers to U.S. equipment, services and investment. If those negotiations do not result in market access for U.S. firms by a certain date, the President should be required to impose restrictions on the access of foreign suppliers to our market. This prospect would put our trading partners on notice that we mean business. The bill before your subcommittee takes this basic approach.

The legislation you are considering would not establish blanket protective tariffs, quantitative restraints, or other restrictions on access to our market.

Restrictions would only be imposed in those instances where foreign countries continued to refuse access to our suppliers. Even then, the foreign country could secure the removal of any restriction simply by agreeing to open its market. These bills are thus designed to combat foreign protectionism, and not to protect our market.

Correctly, the bill does not single out any one country as solely to blame for the trade crisis in this sector. The problem we confront is attributable to protectionist practices and policies in most major industrialized nations, including not only Japan but the European Communities nations and Canada.

The telecommunications trade problem is a time-sensitive matter. In our industry, product life cycles are very short, sometimes only two or three years. A competitive reversal in one product generation can foreclose a company from participating meaningfully in future generations of that product -- and at present our firms are competing at a fundamental disadvantage.

Because of this critical time element, we urge the Congress to act quickly on appropriate remedial legislation, and that under any legislation, no more than one year should be allowed for presidential negotiations. As I stated earlier, another year has passed since my last testimony with further deterioration of the telecommunications trade deficit.

Fully recognizing the burden that this shortened timetable would place upon our negotiators, we are prepared to provide whatever advisory support necessary to enable our government to meet this timetable.

I represent a U.S. industry which is a world leader technologically, which has invested heavily in modernization and innovation, and which has continued to spawn new companies and new jobs. To protect and further our competitiveness, we in the telecommunications sector of Rockwell International invest about 11 percent of our sales dollars in research and development annually and about 7 percent in new capital investments. This investment is not atypcial of our industry.

We are headed for serious difficulties if the trade and market access issues which I have addressed today are not resolved. A trading order in which our market is open and those of our trading partners remain closed is inconsistent with the economic well-being of this industry and contrary to the principles of free trade which underlie this country's trade policy.

The bill before you addresses the current disparity in market access opportunities which exists. If enacted, we believe it offers the prospect of a more open and more truly competitive world market for telecommunications equipment.

- END -

Chairman GIBBONS. Thank you.
North American Telecommunications Association?

STATEMENT OF EDWIN B. SPIEVACK, PRESIDENT, NORTH AMERICAN TELECOMMUNICATIONS ASSOCIATION

Mr. SPIEVACK. Mr. Chairman, Members of Congress, it is a privilege that I have this opportunity to address this committee again on behalf of the North American Telecommunications Association. As the committee will perhaps recall, a year ago when we testified on predecessor legislation, we were not in favor of it.

This time we take a more neutral position. We certainly can join the views of Mr. Culp, but we are less sanguine about the effectiveness of this legislation, for the simple reason that we believe that it involves a continuing effort in the odyssey of disagreement between the Congress and the administration over the lack of administration willingness to use existing provisions of the law to improve American competitiveness abroad.

We think in a certain sense the President already has the statutory authority to negotiate the elimination of barriers in foreign markets, and in a certain sense he has already done that in Japan, but at the same time the amount of exports from the United States to Japan has not increased significantly and we face even more critical and grave problems in Canada and the Western European industrial markets where nearly $35 to $40 billion a year is blocked to U.S. exporters.

We recognize the problems we face. At the same I guess our view more particularly is that, even if those markets are opened, our major national corporations—corporations such as Mr. Culp's—are going to certainly have less difficulty than perhaps they do now. But there is a whole range of American industry in the small to medium size manufacturing areas that simply lacks the resources to operate in foreign markets.

If we can assume that the multinationals will do the largest amount of business, and that they will do a sufficient amount to redress the balance of trade deficit, then perhaps the issue is resolved. But we think that much more Government cooperation and effort is going to be needed to really get the export movement off its back, and place the middle range and small manufacturers in high tech industries in a position where they will be able to deal in foreign markets. Today, in order to deal in high technology in foreign markets, they have to be able to establish not just an order-taking process, but foreign sales and services and technical support, sales training and all the rest that is involved in the establishment of foreign markets. And that is a long-time investment.

Long-term investment involves a period of years in which the likelihood of return is small, even if the total amount of the exports is great. So that probably will remain even within this legislation.

Insofar as the specifics of legislation are concerned, there are some areas in which we think that there is large room for improvement.

First of all, we are dissatisfied with the existing or the proposed changes to the antidumping legislation. As we have testified before, we think that under U.S. law the antidumping legislation should be modified to give Americans who bring antidumping cases a presumption of truth upon their complaints, rather than having to face the enormous burden of trying to achieve the burden of proof and discovery where documents can't be obtained. They should not have the burden, and those against whom the charges are made, as in other countries, should have to come forward with disproof on such cases.

As we have testified before, we are greatly concerned about national defense export restrictions. This is a nagging problem for us, because there is a sense in which Richard Pearle and the people who run his national security operation are "Manchurian candidates". They don't protect American industry or the security of national security information.

What they do is prevent Americans from exporting products for which there are equivalent high-tech products in foreign markets. They just make it easier for foreign nationals to do business in countries from which the American industry is blocked by reason of alleged national security considerations.

We believe also, that the time is coming when Congress is simply going to have to take account of the disparity of currency to trade, and establish some kind of provisions in this or other legislation that mandates that the Department of the Treasury maintain the neutrality of currency to trade.

Currency has now totally divorced itself from economics and destroyed the concept of comparative economic advantage.

In terms of the specific legislation itself, there are proposed intellectual property rights provisions. We think that the injury test should be removed. If somebody is stealing intellectual property from the United States, Americans should never have to prove injury before that grievance can be redressed.

We think that there needs to be some automaticity in the Export Import Bank financing where the American companies should not have to go and refile an application again if it needs a lower interest rate in order to remain competitive on a foreign bid.

Some provisions we believe are needed in advance manufacturing to eliminate strictures on antitrust laws, so that American companies can joint venture together in high-technology development with respect to foreign countries.

We believe that the surcharges imposed as one method of sanctions under this proposed legislation should be removed because they are highly likely to lead to trade wars and highly likely to lead to problems between domestic nations operating in foreign countries, and various different kinds of reprisals.

We think that the scofflaw provision in this statute is burdensome and bureaucratic, under terms of which the slightest error made in import documentation by a U.S. company can lead to fairly secure sanctions in terms of importing.

We think also that this Congress is going to have to ultimately address the question of the extent to which American national corporations make up about $80 billion—or about 50 percent of the trade deficit—by exporting products from their foreign manufacturing sources to the United States.

We find it somewhat ludicrous that as more and more foreign manufacturers are coming to the United States and establishing plants, U.S. manufacturers are still going abroad to seek out markets of cheaper labor.

There is a provision in title 206—which we asked last year and I am pleased to say in this bill—that would maintain the viability of existing contracts between the U.S. and foreign nations upon the date of enactment of the legislation.

We think that ought to be further amended to at least protect the inviolability of contracts also at such times as sanctions might be taken to let those contracts work their way through and we have proposed language in our testimony on that.

We also think that the legislation should have a provision in it that enables industrial trade organizations in the United States to also attempt to negotiate on a central basis to eliminate problems in sectoral areas of trading and telecommunications and high-tech before sanctions are taken.

I see my time is up.

I thank you. We have prepared testimony and look forward to working with the committee.

[The statement of Mr. Spievack follows:]

TESTIMONY OF

EDWIN B. SPIEVACK

PRESIDENT

NORTH AMERICAN TELECOMMUNICATIONS ASSOCIATION

My name is Edwin B. Spievack. I am President of the North American Telecommunications Association (NATA), the trade association of the telecommunications equipment industry. NATA today represents about 650 independent manufacturers, suppliers and distributors of state-of-the-art telecommunications equipment, such as Private Branch Exchanges (PBXs) and key systems. Our members are both domestic and foreign-owned companies. On behalf of NATA's worldwide membership, I appreciate the opportunity to testify on H.R.3, the "Trade and International Economic Policy Reform Act of 1987," now pending.

Mr. Chairman, we respect the objectives of this subcommittee as reflected in H.R.3. As Americans we would be the last to minimize the pernicious trade deficits this country continues to experience with the industrialized nations of the world. Moreover, we recognize that our current dilemma in international trade is inextricably bound up with this nation's long-term future for economic competitiveness around the world.

An emergent global economy has created unprecedented challenges to the traditional American capacity to innovate, produce and competitively exchange goods and services in the international marketplace.

"The world economy is not changing," as Peter Drucker notes, but "has already changed in its foundations and in its structure, and irreversibly so in all probability." In the face of this seemingly unalterable condition the United States has been experiencing an erosion of its economic vitality and productivity for many years.

The decline in America's overall economic strength is recognizable by an array of major indicators including: a 50 percent deceleration in GNP growth rate over the past 30 years; a federal debt that has increased as much as nominal GNP over the past five years (one trillion dollars); a current merchandise trade deficit of $170 billion dollars, which is larger than the collective GNP of 170 of our 179 trading partners; average weekly earnings in real dollars have fallen below 1963 levels; investment and productivity growth have slowed to a fraction of those in other nations; total debt of business, consumers and government is nearly twice GNP, a post-1920's high; and, in comparative test scores among students in industrialized nations, American youth ranks near the bottom.

Many of the problems of economic competitiveness are deep-rooted and systemic, holding implications for every citizen, for our major public and private institutions, for our system and for our way of life. Unchecked, these problems will lead inexorably to a reduced standard of living for all Americans and weaken our leadership in the cause of a more abundant and secure world. I do not think it an overstatement to suggest that the matter of U.S. economic competitiveness now places the destiny of the American Republic on the hinge of history.

Yet, despite the clear links between international trade and our competitive stance, our difficulties with the trade equation are more symptomatic than causal of the crisis in economic competitiveness. Fixing the trade problem will not by itself ameliorate the complex and intricate forces blunting our economic prowess.

Nevertheless we must resolve our trade problems. We must be certain that the proposed solutions are substantive rather than political -- responsive rather than reactionary. We must begin with a realization that there are no "magic bullets" or "quick fixes." We must begin with an understanding that we must first change our point of view about international trade before we change the laws governing our approach to this most critical business.

It is very difficult for us to take a position on this proposed legislation because H.R.3, in and of itself, has very little to do with international trade. At this point in time it has far more to do with congressional dissatisfaction with the fact that the President has failed and refused to use existing statutory authorities to establish conditions of fair and open competition in foreign markets -- and to deal with the mounting trade deficit.

With all respect, Mr. Chairman, Congress is angry. That anger is not without justification. But I fear that the expression of that anger beggars the central issues of an egregious posture on international trade. As we see it, Congress is merely attempting to write legislation to take discretion away from the Executive Branch and to see whether legislation itself can be used to resolve a political question: to do what the President will not do.

There is another aspect in which the legislation is irrelevant. This is in the sense that it expresses an assumption by the Congress that Americans and American business are free traders -- ready, willing, able and capable of competing in foreign markets. It neglects the historical reality that, since the founding of the Republic, American business has been protectionist and has never developed any significant capacity or ability to operate in foreign markets.

During all of our history when the United States enjoyed export surplusses, this phenomenon was due simply to the exigencies of war, or other foreign conditions of shortage, which compelled the rest of the world to turn to the U.S. as some global cornucopia -- a breadbasket of both agricultural and industrial products.

But beyond these exceptions of war and shortages -- with a needful world seeking past American abundance -- U.S. business has been mainly satisfied to stay within our continental borders serving a domestic marketplace of unparalleled consumption. A marketplace, both then and now, unparalleled in the history of the world.

Now, all of a sudden, when foreign producers -- because of our free-trading policies -- have eroded American manufacturing capacity, markets and shares, the question of U.S. economic competitiveness becomes one of trenchant moment. Unnoticed, or disregarded, until now has been the role of America's multinational corporations. Possessing all the resources to prosper anywhere in the world, they have established their production facilities abroad and today account for nearly 50 percent (or $80 billion) of the current annual trade deficit.

The rest of American industry is paying the price. And, those small and mid-range manufacturers, whose products could move in foreign markets, lack the resources with which to open those markets -- assuming all conditions of fairness were in existence.

So the issue is really not whether the President exercises discretion, or whether Congress mandates it. The issue is what the United States Government can and will do to make American industry more competitive in world markets. What resources and programs will Congress advance to help subsidize American industrial ventures into foreign markets, just as other nations pursuing mercantilist policies subsidize their ventures into the U.S. marketplace?

The real issue is that American business wants and needs a cooperative relationship with American government in the establishment and assertion of American competitiveness in world markets. For the vast majority of American business that relationship -- and the opportunities it would unfold -- simply does not exist today.

The tariff and non-tariff barriers to trade in most foreign countries are undeniable problems. Mercantilist policies, long established among most of our major trading partners, are buttressed by a wide variety of factors ranging from ancient cultural biases to contemporary perspectives on where a truly global marketplace is really heading. We invented niche marketing here. Most other industrialized nations -- including the newly industrialized nations, or NICs -- have learned to niche market the world.

Barriers to trade do not come down easily or quickly elsewhere in the world. But the United States will not bring them down any quicker by erecting new barriers of our own. Indeed, as other nations liberalize, however slightly or incrementally by our standards, we must concentrate on removing the barriers that hobble our own industrial trading potential here at home.

We can speak best to the questions of improving trade in telecommunications. And while H.R.3 has a major section on telecommunications, we are more comfortable in addressing some of the bill's broader provisions, which we believe are in the interest of both telecommunications specific and general trade questions. H.R.3 has some very good points. However, we would like to make a few suggestions that we believe could strengthen or improve the bill overall.

Before making those suggestions, I would like to make several observations about the current climate and conditions for telecommunications trade.

Mr. Chairman, I had the privilege of testifying before this subcommittee nearly a year ago on telecommunications trade legislation then pending. At that time I characterized the environment as one in which U.S. access to foreign markets for telecommunications products and services was generally poor to near non-existent. I regret to say that the overall conditions have not changed dramatically in the intervening eleven months.

But I did report to this subcommittee the distinctly different circumstances of our access to the Japanese market as opposed to the European Economic Community and Canada.

Barriers to trade with Japan in telecommunications products and services have existed. To the best of our knowledge, however, those barriers have been substantially removed. And the Japanese government, at the urging of their own telecommunications industry, is promoting or attempting to implement policies which will serve to stimulate expanded procurement of U.S. products and services in virtually every category of telecommunications.

Japan, as we have stated before, is a relatively small market -- currently running at about $4.2 billion. Under the spur of competition we believe it could generate more. The question, of course, is who will get it.

By contrast, the situation in the EEC is much more problematic. Western Europe represents a $35-40 billion market for telecommunications. It has long been closed to most of our manufacturers. And the movement toward liberalization has been snail-paced, if at all.

We have come to learn that privitisation and liberalization have a different meaning in most foreign countries than they do here. State control, or state "addiction," remain nettlesome problems in most countries. Yet our record with Japan, in telecommunications, short and insufficient as it may be, is almost spectacular by comparison with our record in Western Europe and Canada.

We believe that the use of both diplomatic and industry-to-industry negotiating methods have not been without some success in improving access to the Japanese telecommunications market. We continue to watch, with the most guarded optimism, incipient efforts with the Western Europeans. It is a slow and painful business, as everyone knows. Yet we must continue -- persistently and patiently -- to negotiate new and expanded access in all major foreign markets. If we must hold a legislative stick to the process, so be it. But we must be careful not to hit ourselves on the backstroke.

Our point here is that the process seems to work best when government and industry people are inspired to work together to achieve market objectives that are not only desirable, but eminently possible. We do not rule out the force of law or public policy in these matters. But we are unabashed advocates of a harmonization of public and private courses that seek common goals -- each in their own way, but certainly not in each other's way. In our opinion, to proceed otherwise is to come at the expense of both the goal and the errand.

Mr. Chairman, I sincerely wish that we could accomplish the errand through the neatness of legislation. What I believe is that we are too sensible to buy short-term answers that exacerbate problems -- which unfolded more slowly and subtly than we care to admit -- and which will be reconciled only with the greatest care, thoughtfulness and a characteristic American vision.

The issues of telecommunications trade cannot be dissociated from a handful of larger questions that deserve our best efforts to answer. Telecommunications trade will not be measurably improved by a sectoral approach. Indeed, our industry opposes sectoral reciprocity.

While the Congress of the United States is rightfully concerned about the need to maintain American advantages in high technology -- advantages which hold promises for American business and employment -- those advantages will simply not be sustained under existing policies of the United States Government.

First, American high-technology industry cannot compete in the trading of high-tech products when the U.S. Department of Defense persistently refuses to allow the U.S. Department of Commerce to issue export licenses for those products.

Until the Congress enacts laws that liberally allow the export of products now restricted by the Department of Defense, where comparable products of foreign manufacture are available as substitutes, we will not compete, sell or export. Other nations do not create these problems for us. We create them for ourselves.

Second, we complain about the anticompetitive practices and dumping of foreign nations, saying that those practices affect the domestic market of American manufacturers. That problem is easily resolved. U.S. domestic laws must be amended to give American manufacturing complainants the benefit of a presumption of truth on their complaints. As in the case of the laws of other nations, foreign manufacturers and countries must shoulder the burden of disproof to the satisfaction of judges, and absent that proof they should be subjected to the retaliatory actions of the United States. Regrettably, we currently treat our own manufacturers as aliens, making it impossible for them to prove cases of dumping and anticompetitive practice.

We believe there are a number of self-interested ways in which this legislation could be improved and strengthened for all American industry as well as the telecommunications industry. We believe there are several principles that the bill should embrace. We also believe there are several provisions which should be either modified or eliminated. We were pleased to propose some of them last year. We have expanded the list in the face of H.R.3. They are as follows:

1. **Antidumping Law Changes**

   We believe it is important to revise two long-standing U.S. antidumping laws (commonly referred to as the Antidumping Act of 1921 and the Antidumping Act of 1916) in order to make those laws a more viable means for U.S. industry to seek relief from injury and redress for damages caused by the dumping of foreign goods in U.S. markets. Changes should achieve those ends by harmonizing to a degree the two principal antidumping laws and establishing a burden of proof that helps cure their major failing: impossibility of enforcement. We would suggest, too, that the notion of civil damages be eliminated, but that the repeat multiple offender provision be strengthened.

2. **High-Technology Export Control Restrictions**

   We believe in the maintenance of a strong national security posture. But we are troubled by contradictory or arbitrary policies and practices in the granting of export licenses. Thus we would suggest that the legislation seek to circumscribe the power of the Defense Department to unnecessarily prevent the export of high-technology products by requiring that export licenses be issued on a finding that like or equivalent foreign products are the subject of international trading by other nations.

3. Foreign Exchange Intervention

This principle addresses two related concerns: (a) that the U.S. Treasury should intervene in foreign currency markets to maintain the neutrality of currency to trade, and (b) that the Federal Reserve should lower interest rates to equivalent rates of interest in foreign nations whenever there appears to be a surge of foreign dollar purchases for the purpose of moving into U.S. investments and savings bond deposits, or the buying of high-interest-yield treasury bills, notes and bonds. An amendment along this line would reinforce and strengthen the recent moves by The White House.

4. Intellectual Property Rights

We believe that the injury test should be removed. It makes no sense that American innovators must prove injury when someone else is clearly stealing from them.

5. International Financing

We support this provision with the suggestion that it be amended to provide for more automaticity by the Export-Import Bank, thus permitting more predictable financing. This would enable us to respond more quickly to competitive opportunities by putting the weight of decision on the merits and quality of a transaction, rather than on the government policy for setting financing.

6. Advance Manufacturing

We support the concept of enabling American industry to enter into domestic joint ventures or consortia for the research and development of advanced products without fear of violating laws that would otherwise prevent such collaborative relationships. The bill should include a provision to accommodate and facilitate these relationships without compromising the purpose and framework of our basic antitrust laws.

7. Surcharges

We are opposed to the imposition of surcharges as presently proposed. It makes no sense to automatically levy an import duty against a foreign exporter simply because that nation has a surplus with the United States.

8. Scofflaw Provision

The customs scofflaw provision in H.R.3 would prohibit all imports by importers of record convicted of three or more customs negligence violations. Negligence could be defined as improper documentation, the fine for which under current law is less than $100. The broad and onerous scope of this provision is detrimental to all U.S. companies that import products and should be eliminated from H.R.3.

9. **Actions Not to Affect Certain Contractual Obligations**

We propose that Title II, Section 206(F) be amended as follows (new language underlined): "No action taken under this section shall affect any binding obligations under any written contract entered into before the date of the enactment of this Act, or any such contracts in effect on the date of action taken under this section of the Act, to which any citizen or national of the United States is a party."

10. **Industrial Association Trade Agreement Authority**

We believe that the trade negotiating process can benefit substantially by utilizing domestic U.S. industry trade associations where relationships with their counterpart organizations in foreign countries exist or can be productively created. Therefore, we suggest that the bill be amended to contain a provision enabling domestic industrial associations to enter into negotiations with industry associations overseas, and to prevent the President from imposing restrictive trading requirements in the U.S., except on a showing that such bilateral industrial association negotiations and agreements have demonstrably failed to achieve results.

Mr. Chairman, if H.R.3 was to be amended in these areas, we believe that the committee will have measurably strengthened the nation's hand in grasping some of the key elements necessary to promote the United States' ability to compete more effectively in many sectors of the world marketplace, including telecommunications.

American competitiveness will be best enhanced by efforts to promote market access abroad rather than by the imposition of market restrictions here at home. We are hopeful that Congress will channel its energies toward this goal.

Our industry does not so much need protection as it needs help and encouragement through a closer alignment of public policy and private initiative. Instinctively, we feel that embracing such a concept can redound to the favor of all American business. Our competitive future as an industry could ask no more. Our competitive future as a nation demands no less.

Thank you, Mr. Chairman, for this opportunity to express the views of the independent telecommunications industry on H.R.3 and the vital issues it seeks to reconcile.

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Chairman GIBBONS. Mr. Bahr?

STATEMENT OF MORTON BAHR, PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Mr. BAHR. Thank you, Mr. Chairman.

I am Morton Bahr, president of the Communications Workers of America. The 650,000 workers represented by our union offer their thanks to this committee for addressing the very serious trade problems affecting our nation.

I first want to go on the record that I support fair trade among nations and oppose protectionism. Our members are among the most skilled, best educated, most productive workers in the world. We are prepared to compete with any foreign worker or nation.

We are anxious to get our fair share of the international market. Unfortunately, history shows free trade as opposed to fair trade, has never been practiced in the world community.

America today operates off of one set of ground rules, while other nations continue to devise new and more clever ways of restricting U.S. products from their markets. We support H.R. 3 and believe this measure will force our trading partners to play by fair rules and develop reciprocal trade practices.

One criticism of the telecommunications section of the bill concerns the time limits for correcting trade imbalances and the broad range of discretionary authority given the President for taking counter measures. We believe the 18 months to 3½ years before action is mandatory is simply too long.

The erosion of our telecommunications industry with all the threats to our national security, and our future competitiveness which that implies requires a far quicker response.

We have a long history of negotiating to open foreign markets with few results. Last year, for example, the USTR signed a chip dumping agreement with the Japanese after lengthy negotiations.

By last month, we realized that agreement has had little impact on the problem. So years after our Government recognized the chip dumping problems with Japan, we are still back at square one. The popular conception of trade legislation, however, is that it is aimed at saving America's so-called rustbelt industries. Even President Reagan added to this last week when he introduced this competitiveness initiatives.

He specifically singled out communications technology as one area where he said "We are still a leader in innovation," an area he described where "Americans are light years ahead of everyone."

Divestiture and deregulations of our telecommunications industry were undertaken without a single thought to our international trade position. Before 1984 telecommunications was a uniquely American industry.

Today, barely 3 years later not a single residential telephone is made in America.

In 1982 our nation enjoyed a $200 million surplus in telephone and telegraph equipment sales. In 1986 we estimated our trade deficit will be $1.3 billion.

Our exports have remained virtually stagnant while imports soared from $600 million to $1.2 billion. American will in 1986 record its first trade deficit in high technology products.

We had a trade surplus of $27 billion in 1980 while posing a $4 billion deficit last year.

Imports of high technology manufactured goods have increased by nearly threefold, from $28 billion in 1980, to $76 billion in 1986. Computer makers serving the military are now more dependent on semiconductors made abroad than ever before, which the Joint Chiefs of Staff said recently could adversely affect national security. At least 100,000 jobs have disappeared in the telecommunications industry since the breakup of the Bell system.

These were jobs in skilled, professional and managerial positions that our children will not have the opportunity even to apply for. Other nations act to promote and support their telecommunications industries. There are some, Mr. Chairman, who suggest that the Japanese have removed barriers.

Last November, in meetings I had in Japan, with the top officers of the Nipon Telephone & Telegraph Co., that proved to be largely untrue. I would like to give two examples.

The company bought 10,000 beepers from Motorola, and suggested to me that we just couldn't deal with the Japanese because we didn't take into consideration the humidity of Tokyo in July, and I suggested, too, these are the same beepers that are used in Washington in July.

They purchased 10,000 telephones for internal use from Northern Telecom out of Nashville, and said they could not use them because the receiver did not fit properly in the cradle, that it was 1 millimeter off. When I suggested that no one could tell that it as 1 millimeter off, they suggested that the Japanese could.

So we must be aware of cosmetic changes.

There are two other important aspects of H.R. 3 that I want to emphasize. My union believes the key to American competitiveness rests on continuing job training and adult education.

Along those lines, we negotiated several pioneering job training programs in our collective-bargaining agreements last year, specifically with AT&T, Pacific Telephone, Bell South as well as other companies. We are anxious to work with you and the Department of Labor on title 5, education training for American competitiveness.

We would like to be involved in the development of title 5, particularly the ways in which it will impact on the telecommunications industry.

Second, we fully support your efforts to include workers rights in our GATT negotiations, and violations of internationally recognized workers rights as unfair trading practices.

Low wages, oppressive working conditions and denial of workers rights create unfair trading conditions and depress the development of domestic markets which makes it even more difficult for us to penetrate foreign markets.

Americas telecommunications and so-called high-tech industries are not immune from the pressures of unfair global competition.

Indeed, the same disastrous economic and trade policies threatening our established basic industries are now poised like a dagger aimed at our jobs and the security of America's industries in the future. H.R. 3 provides an immediate response to our trade problems, and offers a sensible trade policy that will guide us into the 21st century.

We wish you success in your deliberations and look forward to working with you towards final passage of this much needed legislation.

Thank you.

[The statement of Mr. Bahr follows:]

Testimony of
Morton Bahr, President
Communications Workers of America

Before the Subcommittee on Trade
House Ways & Means Committee

February 27, 1987

The 650,000 workers represented by the Communications Workers of America offer their thanks to this committee for addressing the very serious trade problems affecting our nation. Although most of our members are employed in the telecommunications industry, we also represent 100,000 government, health care and other service industries workers. They have discovered that America's trade problems affect them just as deeply as any manufacturing worker.

When good paying jobs are lost and unemployment remains at consistently high levels, a ripple effect is felt throughout our economy that erodes tax bases and effects all businesses, large and small. Today, America's massive trade deficit is setting off a tidal wave that is also swamping many of our non-telecommunications workers.

But I want to go on the record that I support fair trade among nations and oppose protectionism.

America competes in a global economy. We are no longer an independent economic system isolated from the rest of the world. America is also the leader in technology, particularly those industries where most of CWA's members are employed and which impact on nearly all workers. Our members are among the most skilled, best educated, most productive workers in the world. We are prepared to compete with any foreign worker or nation. We're anxious to get our fair share of the international market.

Fair trade among nations promotes democratic values throughout the world, raises living standards and improves the quality of life for everyone. For America, unrestricted international trade benefits consumers, opens markets for our products and creates new jobs for our children.

Unfortunately, history shows free trade, as opposed to fair trade, has never been practiced in the world community. It does not now exist. And it will never exist. As an economic theory, the dream of a barrier-less world trading society is no more viable then the Marxist-Leninist vision of a classless economic society. But America today operates off one set of ground rules while other nations---particularly our largest trading partners--continue to devise new and more clever ways of restricting U.S. products from their markets.

In the eyes of the world, America is the great cornucopia of consumerism. Through the targeting of domestic production, skillful protection of their own markets and assistance from their government, foreign businesses have succeeded well in penetrating the American market.

Imports now make up:
* 63 % of all radio and TV sales;
* 58% of all shoes--up from 33% in 1981
* 45% of machine tools

On the other hand, American exports as a share of domestic production has slumped drastically in recent years:

* In 1981, 41% of the domestic production of our construction machinery was for foreign export. Today, it's only 21%.

* American production of home appliances for sales overseas dropped from 10% to 6% in four years.

* Today, only 2% of U.S.-made apparel is exported; 1% percent of our steel mill products; 2% of automobiles made here; 1% of home furniture; 3% of shoes.

So, the debate is not about protectionism, or excluding imported goods. The issue is opening the doors of foreign markets to our products while preventing foreign goods from being dumped unfairly on our markets. The politicians, academics, business leaders, news media pundits and other so-called experts who continue to frame the question in terms of "protectionism versus free trade" are doing the American people a great disservice. The stakes are too high to engage in misleading labels and self-serving propaganda.

The current situation in which we find ourselves is simply intolerable:

* The U.S. 1986 trade deficit of $170 billion is four times as bad as 1980, and has sapped about two percentage points from our GNP growth. The falling dollar abroad may help, but it will be years before the U.S. recovers from the trade deficit of this magnitude.

* The 1986 trade imbalance cost the United States 2.5 million jobs. Saving those 2.5 million jobs would have reduced the unemployment rate from 7 percent to 5 percent last year.

* In just three years, the U.S. has gone from the world's No. 1 creditor nation--position built up over two-thirds of a century--to the world's No. 1 debtor nation. Americans now owe foreigners nearly $200 billion more than they owe us.

* The median family income has fallen steadily over the years. Today median family income--as measured in constant dollars--is only $27,735, down from $29,169 in 1973.

The major reason for this is declining wages. Income in the manufacturing sector has always been the highest, but manufacturing has been most hurt by unfair foreign trade. Manufacturing wages have fallen in real terms from an average of $9.93 an hour in 1979 to $9.52 in 1985.

* Not just wages are falling. Industrial jobs, the good paying-jobs that built America's middle-class and which offer opportunity to our children --are disappearing. We lost 1.5 million jobs in manufacturing during the past six years, primarily due to unfair foreign trade.

* At the same time, we have seen the unprecedented growth in service jobs, more than 9.7 million since 1979. Service industries, which are mostly insulated from unfair foreign competition, traditionally are non-union and pay the lowest wages.

* America's GNP, the measure of our economic well-being, has lagged dramatically. According to U.S. Commerce Department estimates, the global gross national product more than doubled during the past couple of decades while the U.S. share declined from more than a quarter to about one-fifth.

Last year, CWA, representatives from other unions and the AFL-CIO, worked closely with House and Senate members to add many strengthening admendments which affected the telecommunications industry to trade legislation. We are pleased to see those amendments incorporated into H.R. 3, and are anxious to support passage of this much needed legislation.

As Representative Gephardt said to me and other labor leaders last week, "America has built a modern, interstate highway for imports coming into this nation. But the superhighway for U.S. exports to our trading partners is a one lane dirt road, filled with potholes." That's how American workers feel, and that's the situation this legislation is designed to correct.

Our major criticism of the telecommunications portion of this bill concerns the time limits for correcting trade imbalances and the broad range of descretionary authority given the President for taking countermeasures. We believe the 18 months to 3-1/2 years before action is mandatory is simply too long. The erosion of our domestic telecommunications industry, with all the threats to our national security and future competitiveness which that implies, requires a far quicker response.

We have had a long history of negotiating in the telecommunications industry to open foreign markets with few results. Last year for example, the USTR signed a chip-dumping agreement with the Japanese after many months of negotiation. Just last month, the evidence revealed that the agreement is all but dead in the water and has had little impact. Years after our government recognized the chip-dumping problems with Japan, we are now back at square one.

CWA representatives will be working with you to develop a much faster time-table for mandatory action by the President.

I also am pleased to report that Senator Danforth has re-introduced telecommunications trade legislation which we expect will be incorporated into Sen. Bentsen's trade package. We have many problems with Sen. Bentsen's bill. But we will be working with Sen Danforth to preserve the telecommunications portions of the bill and to coordinate the language between the Senate version and H.R. 3.

The popular conception of trade legislation, however, is that it is aimed at saving America's so-called "Rust Belt" industries. Even President Reagan added to this myth last week when he introduced his competitiveness initiatives. He specifically singled out communications technology as one area where "we are still a leader in innovation," an area he described where "Americans are light years ahead of everyone."

As a person who is involved in the telecommunications industry on a daily basis, I want to update you on the crisis in our domestic telecommunications industry caused by our trade problems which underscore the urgency of your deliberations.

Divestiture and deregulation of our telecommunications industry were undertaken without a single thought to our international trade position. Before 1984, telecommunications was a uniquely American industry. We led the world in innovation. The quality of our products was the highest anywhere. Telecommunications offered the promise of "America's industry of the future." Telecommunications jobs paid middle-class wages and offered future employment to younger generations of American workers.

Today, barely three years after divestiture, not a single residential telephone is "Made in America." When AT&T closed its Shreveport, Louisiana plant, the last plant making residential telephone sets, more than 1,000 jobs were lost, forever. The plant was moved to Singapore. I know this was a difficult decision for AT&T management. But our tax laws encouraged their decision, and cheap wages paid overseas made it inevitable. Our current trade laws will permit the products made in that plant to be imported to our country without restriction.

Just last fall, 500 jobs were lost, forever, in Katy, Texas, a suburb of Houston. AT&T closed a manufacturing plant and simultaneously opened a plant in Mexico. Appeals to the highest levels of AT&T management from our representatives, business and civic leaders from Katy and from former Governor White fell on deaf ears. Our current trade and tax laws, and the cheap wages paid Mexican workers, made that decision inevitable.

I could list many other examples of lost jobs and opportunities, but I'm not singling out AT&T for criticism. You and your colleagues, however, should be aware that AT&T, our nation's biggest telecommunications provider, is no longer "American" Telephone and Telegraph. AT&T has joined that long list of multi-national corporations which owe allegiance to no flag or country.

In fact, AT&T Chairman James Olsen said in a recent Wall Street Journal article that one area of future business expansion is in foreign sales. He was quite blunt in stating that if AT&T were to crack a large overseas market, such as Japan, the company would probably build manufacturing plants there to provide the equipment. The results would be no American jobs and few benefits to American consumers.

The statistics tell the story of the trade impact on our domestic telecommuications industry. In 1982, our nation enjoyed a $200 million surplus in our balance of trade in telephone and telegraph equipment sales. In 1986, we estimate our trade deficit in telephone and telegraph equipment will be 1.3 billion dollars. Our exports have remained virtually stagnant while imports soared from 600 million dollars to 1.2 billion.

America will, in 1986, record our first trade deficit in high technology products defined by the U.S. Commerce Department. We had a trade surplus of 27 billion dollars in 1980 while posting a 4 billion deficit last year. Imports of high technology manufactured goods have increased by nearly three-fold, from 28 billion dollars worth in 1980 to 76 billion in 1986.

Computer makers serving the military are now more dependent on semiconductors made abroad then ever before. Fujitsu's merger with Fairchild is sending shockwaves throughout the U.S. chip industry which the Joint Chiefs of Staff said recently could adversely affect national security.

The Wall Street Journal reports that Cray Research corporation, which makes powerful computers for the military, now is having difficulty getting semi-conductor parts from one of their key suppliers: Hitachi. Hitachi, of course, also competes with Cray in the supercomputer market.

E. Patrick McGuire of New York's Conference Board warns, "Many U.S. military suppliers simply cannot cut it anymore without a lot of help." In addition to semiconductors, he also cites optical products.

A hundred thousand jobs have disappeared in the telecommunications industry since th breakup of the Bell System in 1984. And current trends suggest a continuing downsizing in the future. These are jobs in skilled, professional and managerial positions that our grandchildren and children will not have the opportunity to even apply for.

The government reported recently that two million new jobs will be created this year. Buried in the report, however, was the explanation that 90 percent of these jobs will be in service industries paying little more than minimum wage. If trends continue unchanged most of those jobs will be part-time positions flipping hamburgers, emptying bedpans or doing laundry. Those are necessary jobs, but you don't build the most powerful nation on earth with a generation of gas station attendants.

There will never be enough good-paying new jobs created by the hi-tech industries to replace the jobs which are disappearing. By the 21st century, we will see the rise of an economic class system in which some workers are employed in the relatively few high-paying, skilled positions while the vast majority work in the relatively unskilled or semi-skilled jobs paying low wages.

Every other nation in the global economy is acting to promote and support their telecommunications industries. Last November, I headed a CWA delegation to Japan. We met with our union counterpart leaders there and reached bilateral agreement on a far-reaching statement of joint activities. During our visit, we also held meetings with top Japanese leaders of Nippon Telephone and Telegraph, including Chairman Shinto, and of the government.

They explained how they recently privatized their telecommunications industry and were very blunt in telling us that they viewed the American example as how not to deregulate. They consider telecommunications as an industry essential to their national security and future competitiveness. They made two key decisions which undersocre the seriousness of their attitude.

First, only Japanese nationals are allowed to buy stock in the new NT&T. Second, foreign companies must form a joint venture with Japanese companies to sell manufactured equipment to NT&T. IBM-Japan already has formed a joint venture with NT&T for research and development. AT&T last fall announced its participation in a consortium with Japanese firms to sell to NT&T.

As I explained to them, we are not upset or angry with Japan over their trading policies. By acting in their own self-interest, the Japanese are doing what every government on this planet should be doing. Our complaints and the complaints of our members are focused at the inaction of our own government.

CWA believes the pressures of the global economy require a more active approach by our government which H.R. 3 represents. Laissez-faire economic policies in the twenties failed to recognize or cure the excesses of the capitalist system which led to the Great Depression.

We fear that the laissez-faire trade policies in the 1980's will contribute to an even greater economic catastrophy from which we may never recover. And telecommunications, America's so-called hi-tech industry of the future, will go the same way as many of our basic, manufacturing industries.

There are two other important aspects of H.R. 3 that I want to call to your attention. My union believes the key to American competitiveness rests on continuing job training and adult education. Along those lines, we have negotiated several pioneering job training programs in our collective bargaining agreements last year.

These programs involve AT&T, Pacific Telesis, Bell South and other companies. In AT&T, for example, we negotiated the creation of a $21 million non-profit organization called "The Alliance for Employee Growth and Development." Under this program, our members will be eligible to receive free training for higher paying or different job skills within the company. They can also receive free education for any occupation they may want to pursue outside of the company.

If they want to be a doctor, or lawyer or bricklayer, they can take advantage of the Alliance programs. Similar training programs have been negotiated with Pacific Telesis, Bell South and NYNEX.

We are proud of these training programs as union-inspired, union-demanded and union-won at the collective bargaining table. These programs will become important demands in future collective bargaining on behalf of all our members.

We are anxious to work with you and the Department of Labor on Title V "Education and Training for American Competitiveness." We would like to consult with you on our experiences in these programs and be involved in the development of Title V, particularly the ways in which it will impact on the telecommunications industry.

Secondly, we fully support your efforts to include workers rights as a specific objective in our GATT negotiations and violations of internationally recognized workers rights as an unfair trading practice. Henry Ford, one of the greatest capitalists of all time, pointed out early in this century,, "Mass production requires mass consumption." He was among the first to recognize that workers must earn a decent living in order to fuel domestic consumption.

Low wages, oppressive working conditions and denial of workers rights abroad creates unfair trading conditions and depress the development of domestic markets which makes it even more difficult for us to penetrate foreign markets. The existence of workers rights has been recognized by conventions of the International Labor Organization. Principles of workers rights also have been written into U.S. law in the Generalized System of Preferences (GSP) and Overseas Private Investment Corporation (OPIC).

Specifically, as defined by GSP and OPIC, these rights include:

* The right of association;

* The right to organize and bargain collectively;

Akio Morita, Chairman of the Sony Corporation, declared recently, "Unless U.S. industry shores up its manufacturing base, it could lose everything."

Without a strong industrial base, history shows that no nation can lay a claim to greatness. But the silence from America's steel hearths, textile mills, auto factories, mining equipment and our manufacturing plants is deafening. Our basic industries are seriously deteriorating, with far worse yet to come if nothing is done.

The telecommuications and so-called "hi-tech" industries, the public and service sectors of the economy, are not immune from these events. Indeed, the same disastrous economic and trade policies threatening our established basic industries are now poised like a dagger aimed at our jobs and the security of America's industries of the future.

Our basic industries are not doomed to extinction. We can reverse the downward trend through a change in government policies, patriotic management decisions and improved labor-management relations. We can learn from the mistakes of the past to build our telecommunications industries even more competitive and powerful.

America is surely at a cross-roads today. H.R. 3 provides an immediate response to our trade problems and offers a sensible trade policy that will guide us into the 21st century. We wish you success in your deliberations and look forward to working with you toward final passage of this much needed legislation.

Chairman GIBBONS. Thank you.

Mr. Culp, I am sorry we weren't able to pass this bill last year. As you know, we sent it over to the Senate and got nothing but stone-walling from the administration. We made every attempt we could to get the Senate to take it up.

We offered it to them in peace, total, no holds barred about negotiations or anything else, or but we just couldn't even get a conversation started. I say all that because I think the record ought to be perfectly clear that the House tried to move last year, and did everything we could to move last year, including expeditious passage of your legislation, of what is now H.R. 3, but we just couldn't get the administration or the Senate to move at all.

I assume we are going to get a little better cooperation from the Senate this year, and I assume we are going to get some cooperation from the White House, although I am not certain how far that is going to go.

One of the problems that we have is that everybody like your section of the bill so much everybody wants to keep it, and come in under it. We have got our good friends in the motion pictures, Mr. Valenti wants to keep it now and come in under it.

Actually if we let everybody keep it and come in under it, it really won't have any impact, because America will have no priorities, so we are going to have to say no to other people for the same reason in the same area we are saying yes to you in.

I want to make it clear now for the record that the reason why we set yours up in a special fast track with special attention is that I think that Americans just unilaterally disarmed, threw away all restraints when the telecommunications industry was deregulated, and I think you are a special case.

We have never bargained in this area because up to this time all telecommunications industries were sort of government-owned monopolies all around the world. They are changing now as the technology changes, but they are not changing a heck of a lot.

I understand that within the European Community now there is some jockeying going on over the purchase of a French company by an American company, and the Germans don't want it. Do you know anything about that?

Mr. CULP. No, sir, only what I have read in the paper.

Chairman GIBBONS. You can't throw any light on that one at all?

Mr. CULP. No sir. It is not uncommon, however, that the indigenous companies in our foreign trade partner nations are supported quite broadly by their governments. I think because of the capitalistic approach, with which we all, of course, concur here, that we compete as companies. In many, many cases our competition competes as nations.

Chairman GIBBONS. Yes, as nations.

Mr. CULP. I would like to take a moment to thank you for your efforts last year. I think that you did an outstanding job. I know we all say we are different, whether it is auto parts or textiles or telecommunications, but telecommunications is extremely important, and as my associate pointed out, it is a strategic issue.

Many, many products that we built in this country five years ago, we don't build here today, cannot build here today, and that technology is gone forever. It is a very critical issue. So I certainly appreciate yours and the committee's assistance in what I consider a very important area.

Mr. BAHR. Mr. Chairman, I think the point you raise deals with a potential break through that AT&T might get in France, and it is the West Germans that are putting the pressure on.

Chairman GIBBONS. Yes, sir. Do you know why they are putting the pressure on?

Mr. BAHR. Because they had the business. They are trying to keep AT&T out of the European Community.

Mr. SPIEVACK. Mr. Chairman, in Western Europe we faced one of the most cartelized situations of anyplace in the world. All the attention in the past has been focused on Japan, but the Western Europeans have put together a consortium in research and development that involves all the major manufacturers in Western Europe.

They have their specialized arrangements though their PT&T's. They have divided up their markets. For example, in Italy I believe only 12 percent of the market is available to U.S. manufacturers who are located in Italy and provide employment in Italy.

The research and development consortium in Western Europe, I am sorry I have forgotten the name of it right now, is structured really to control the rate at which new technology will be introduced in Italy, so that all the antiquated—not in Italy, but in Western Europe—so that all the antiquated manufacturing that goes on in Western Europe will be obsoleted too fast, and the Europeans, many of whom I have talked to on this issue, and representatives of European Economic Community, are less concerned, however, about telecommunications than we are.

They are very angry at the United States over the fact that the Japanese, from their point of view, were willing to negotiate on a sectoral basis, and liberalized in the telecommunications area, from their point of view, much more rapidly than we did. But they want quid pro quos, and they are much more interested in maintaining their smokestack industries, and some of the European representatives to the Economic Community in Europe told me that they will liberalize telecommunications much more rapidly than they have in the past, and will look at it much more seriously, if we will make concessions for steel. That is how Europe is thinking about it.

Chairman GIBBONS. Our steel policy does become a linchpin in a lot of negotiations. Next to the textile industry the steel industry has probably gotten more protection from the United States than any other industry in America, and it does cause us some interlock there that obviously is a problem.

Mr. BAHR. That is correct.

The other part of it is that the administration has failed in convincing Western Europe and other industrial nations that they need to speed up and accelerate growth in their economies, and the reality is that they don't do that because growth and competition tend to disrupt existing patterns of employment.

At the same time, therefore, with the lack of growth in foreign trade the United States which is open, totally open, is the surplus market to the world, and no one very much cares about the extent to which it is adversely affecting our own manufacturing base and our own employment.

I am simply amazed at the extent to which American businessmen, although I understand why they do it, go into foreign markets to obtain cheaper labor. At the same time this country needs on average about $56,000 of capital investment for every single American employed. I have seen the Olivetti plants that are 100-percent automated in Italy, and that plant could be anywhere.

I mean it doesn't take any employment, the computer is produced from beginning to end without a human hand on it. It doesn't resolve any employment problems here or there, but certainly if you make the investment and if you can somehow be required to make that investment, you can reindustrialize America.

I am not so depressed that we can never recover our technological leadership in this country, but I think the Government is going to have to make a much stronger effort. I am very sympathetic personally to the desire of American chip manufacturers for what amounts to a $1 billion subsidy to redress the balance of technology. I think that should be done.

I understand the problems of the deficit, but I think that to believe we can build a strong national defense off a weak domestic economy attempts to prove something that has never been proven in the history of the world, and so if we extract the $1 billion from the defense budget to rebuild the technological base of chip manufacturing in the United States, we have done an enormously successful thing in this country.

Chairman **Gibbons**. Mr. Levin?

Mr. **Levin**. I have no questions.

Chairman **Gibbons**. I want to thank you all for your thoughtful testimony.

Mr. **Culp**. Thank you, Mr. Chairman.

Chairman **Gibbons**. Now we come to our final panel of the day, the International Ladies' Garment Workers' Union of America, Mr. Hovis and for the North American Coalition for Human Rights in Korea, Mr. Harvey.

Ladies' Garment Workers.

STATEMENT OF JAY MAZUR, PRESENTED BY HERMAN STAROBIN, RESEARCH DIRECTOR, INTERNATIONAL LADIES' GARMENT WORKERS' UNION

Mr. **Starobin**. Mr. Chairman, Mr. Mazur is ill and he has asked me to take his place.

Chairman **Gibbons**. Yes, I am sorry to hear that.

You are?

Mr. **Starobin**. I am director of research of the International Ladies' Garment Workers' Union, and I would like to summarize Mr. Mazur's statement.

Chairman **Gibbons**. You have got a very important lady right behind you back there.

Mr. **Starobin**. We certainly have, Mr. Chairman.

Chairman **Gibbons**. We all admire her.

Mr. **Starobin**. We do, too.

I would like to summarize Mr. Mazur's statement. The entire statement will be presented to the committee for the record.

Chairman **Gibbons**. All right, sir; go right ahead.

Mr. STAROBIN. Never in its long history has the future of our industry seemed so bleak. Apparel imports continue to rise relentlessly and take over an ever-growing share of our domestic market. Garment shops across our Nation are curtailing production or closing down altogether. Thousands of workers are losing their jobs and their livelihoods.

Our industry is often accused of being over protected. Since 1973 the U.S. Government has been a signatory to the Multi-Fiber Arrangement (MFA) and bilateral agreements with major apparel exporting nations. However our Government has failed to take the actions it could have taken to prevent our domestic industries from being dismantled by foreign production.

When MFA was being negotiated in 1973, the import share of the domestic apparel market was 21 percent. Today after 13 years of MFA, the import share is 55 percent, and climbing.

Imports of apparel made of cotton, wool and manmade fibers have doubled since 1980. Last year alone, apparel imports made of these three fibers alone rose 13 percent. If imports of garments made of silk, linen and ramie are included, last year's gain would be near 18 percent.

Since domestic apparel consumption has grown at only a fraction of the pace of imports, domestic production has been decimated. Output of women's and children's wear is down 18 percent since 1980. Production worker employment in women's and children's apparel has declined by 25 percent since MFA was first negotiated in 1973, a loss of over 165,000 critically needed jobs.

The destructive impact has been felt throughout the Nation. Even the Sun Belt, which had been showing growth some years ago, has been hard hit in recent years. Of the 20 top apparel producing States, only two, California and North Carolina, show increases, very small increases at that, in employment between 1980 and 1986. The other 18 States, half of which are in the South, all lost ground.

The only boom in apparel today is among importers and retailers.

The Textile and Apparel Trade Enforcement Act was introduced in the last session of the Congress to prevent further harm to the domestic industry. Some of those who opposed that legislation may have done so believing that the legislative action was no longer needed, that a renewed MFA and a sagging dollar was remedy enough. How wrong they were.

The MFA renewal in 1986 was but one more illustration of our Government's unwillingness to take decisive action in support of our industry.

Only legislation can force our Government to act in defense of the clothing and textile industries and their workers. It would be simple if comprehensive trade legislation could be effective in industries such as ours. Unfortunately, the remedies offered by H.R. 3 have limited application to labor intensive industries like apparel.

Such unfair trading practice as dumping or subsidies are not at the core of our import problem. Hence, the barring of such unfair trade practices does little to level the playing field for apparel trade.

Similarly, foreign barriers to U.S. exports have little significance for the welfare of the domestic apparel industry. In fact, a large fraction of our exports consists of cut garment parts leaving the country for sewing abroad under Item 807.00 of the Tariff Schedules, but which are later brought back for sale in the U.S. market.

The problem we face is not a lack of competitiveness in design or productivity. Rather, it is the extremely low wages and deplorable conditions prevailing in the countries that are major shippers of apparel to the United States. Hourly compensation levels in the major apparel shipping countries are only 2 to 25 percent of U.S.-wage rates.

No matter how effective comprehensive legislation may be in solving the international trade problems of other industries, it cannot solve our problem. We need industry-specific legislation that will allow our workers to share in the U.S. market.

The Textile and Apparel Trade Act of 1987 has been introduced in an effort to provide a minimally acceptable solution to our industries problems. Its supporters have taken into account some of the objections raised to last year's legislation in drafting provisions of the new bill.

The new legislation covers all countries. It provides for a 1 percent growth in imports each year in each textile and apparel category. The starting point for each category is the level of 1986 shipments. There are no cutbacks, even for the larger shippers.

The President can allocate the global quota as he sees appropriate, taking into account the needs of the United States and the individual countries.

Lastly, the bill provides for a reduction of duty to compensate the exporting nations for the imposition of quotas.

Low-cost imports threaten our living standards, particularly those of low income groups, by destroying badly needed employment opportunities for the U.S. apparel workers. Our industry employs large numbers of women, minorities, immigrants and so many others for whom few alternative employment opportunity exists. Many workers have limited education in English language skills. These workers have little opportunity for geographic mobility or retraining.

As a diverse society, we have a collective responsibility to ensure our economy provides a full range of job opportunities.

We urge you to give careful consideration to the Textile and Apparel Trade Act of 1987 in the interest of developing a rational and reasonable approach to our trade in textiles and apparel.

May I just add, Mr. Chairman, that I would at some point like to answer a question you asked of Mr. Trogdon, or attempt to answer it, with respect to a czar in textile quotas.

Chairman GIBBONS. Certainly. Any time.

Mr. STAROBIN. I should say as an introduction that in the textile and apparel trade policy program of the U.S. Government there are industry and labor advisers. I am one such adviser and have accompanied U.S. trade negotiators all around the world, to a large number of countries. There is, in fact, a czar at is moment, and there has been a czar for some time, and that is the Office of the Special Trade Representative, which dictates policy within a fivedepartmental committee called the Committee for Implementation of Trade Agreements (CITA).

We have seen consistently the imposition of import levels that are considerably higher on an almost unilateral basis by the STR and its negotiators who chair our negotiations with countries with whom we have bilateral agreements.

Chairman GIBBONS. Would you say the USTR has systematically undercut the agreements, is that what you are saying?

Mr. STAROBIN. I am saying the agreements are badly undercut, because in principle, Mr. Chairman, when the first MFA was enacted in 1973, the growth levels that were provided for ranged up to 6 percent. If we look at the figures, aside from individual countries, in 1981 over 1980, the increase was 8.7 percent; 1982 over 1981, 7.9 percent; in 1983 over 1982, 14.6 percent; in 1984 over 1983, 21.7; in 1985 over 1984, 8.5; and in the last year, 13.3 percent.

They negotiated or permitted entry into the United States of increases ranging up to 65 percent in the case of the People's Republic of China in 1986 over 1985. So these figures are far from the 6 percent that was spoken of in MFA and has been spoken of traditionally. Certainly, they are considerably higher than the 1-percent-annual growth in consumer purchases of apparel over the last 10 years. Therefore, tremendous erosion has taken place in employment and on the part of the employers in the industry.

Chairman GIBBONS. So you are saying, in effect, USTR is already the czar.

Mr. STAROBIN. I am saying it is, sir, from my own experience.

[The statement of Mr. Mazur presented by Mr. Starobin follows:]

Before the Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives

STATEMENT
OF
JAY MAZUR, PRESIDENT
INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO
FEBRUARY 27, 1987

This statement is submitted on behalf of the International Ladies' Garment Workers' Union, AFL-CIO. Our Union has over 200,000 members employed in the production of women's and children's apparel. Our members live and work in more than two-thirds of the states spread across our nation.

Never in its long history has the future of our industry seemed so bleak. Apparel imports continue to rise relentlessly and take over an ever growing share of our domestic market. Garment plants across our nation are curtailing production or closing down altogether and thousands of workers are losing their jobs.

The American garment industry and its workers are caught between two fires. On one side, importers and retailers seek ever increasing imports in the pursuit of profit without regard for the damage done to the U.S. industry and its work force. On the other side, our government not only stands by and fails to act to prevent the disruption of our markets but actively works to injure American job opportunities. We believe that American workers have a right to expect their government to be on their side.

The ILGWU is not given to issuing wild claims and false alarms. Year after year we have heard our opponents in and out of government tell us how well we were doing, how some new government action was finally going to help us. Each time we warned that the proposed actions were too little and too late. And, each time history proved we were right. The facts speak for themselves.

Our industry is often accused of being over protected. By what standard? One must look at the reality not merely the paperwork. Certainly, there is a considerable body of law and international agreements that would permit the United States to take appropriate action. Since 1973 the United States government has been a signatory to the Multifiber Arrangement (MFA) and bilateral agreements with the major apparel exporting nations. And, since 1973, the United States government has failed to take the actions it could have taken to prevent our domestic industries from being dismantled by foreign production.

When MFA was being negotiated in 1973, the import share of the domestic apparel market was 21 percent. Today, after 13 years of MFA, the import share is 55 percent and climbing.

Between 1980 and 1986, imports of apparel made of cotton, wool and man-made fibers increased 101 percent (measured in square yards equivalent). In 1986 alone, apparel imports made of these three fibers rose 13.3 percent. And, if one takes into account the huge rise in garments made of previously uncontrolled fibers such as silk, ramie and linen, the 1986 rise in apparel imports would be closer to 18 percent.

Had domestic consumption grown proportionately, the problem would have been of manageable scope. Unfortunately, this has not been the case. Apparel consumption in the United States has grown at only a fraction of the pace of imports.

Often used hand-in-hand with the charge of over protection is the equally false contention that our industry is in a boom. What a cruel hoax it is to describe an industry that is rapidly being decimated and reduced to but a shell of its former self as being in a boom.

The flood of imports has taken a severe toll on job opportunities in our industry. In 1973, when MFA was first negotiated, over 660,000 production workers were employed in the manufacture of women's and children's wear in our country. In 1980, the number of jobs was down to 577,000. By 1985 and 1986, only 494,000 such jobs still remained on employer payrolls, a decline of 25 percent under the supposedly protective aegis of the MFA.

The employment decline in our industry is all the more shocking in the light of the 14 percent increase in population that has taken place in the United States since 1973. Relative to population, employment in women's and children's wear has lost ground by over 42 percent since the MFA was first negotiated in 1973.

The only boom in apparel is among importers and retailers. Some apparel firms are erroneously thought of as domestic apparel manufacturers even though they import most, if not all, of the merchandise they sell.

The pervasive destructive impact of apparel imports has hit many different parts of the nation. Even the sun-belt, which had been showing growth some years ago, has been hard-hit in recent years. Of the 20 top apparel producing states in the nation for which data are available, only two -- California and North Carolina -- show increases in employment between 1980 and 1986. The other 18 states all lost ground.

ALL EMPLOYEES, APPAREL INDUSTRY, 20 LEADING STATES, 1980-1986
(arranged by percentage of decline)

State	Employment(000's)		Percent Change
	1980	1986	
Illinois	22.6	15.4	-31.9%
Maryland	15.3	10.8	-29.4%
Texas	74.8	55.2	-26.2%
Massachusetts	39.8	29.4	-26.1%
Pennsylvania	124.1	100.2	-25.5%
New York	169.3	129.9	-23.3%
Arkansas	13.4	10.7	-20.1%
Virginia	34.3	29.5	-14.0%
New Jersey	55.7	44.0	-13.5%
Mississippi	40.9	35.7	-12.7%
Tennessee	69.4	62.0	-10.7%
Indiana	10.9	10.0	- 8.3%
Florida	34.1	31.4	- 7.9%
Alabama	53.9	49.9	- 7.4%
Kentucky	27.4	26.0	- 5.1%
South Carolina	46.4	44.2	- 4.7%
Ohio	17.1	16.3	- 4.7%
Georgia	72.3	71.1	- 1.7%
North Carolina	88.0	89.7	+ 1.9%
California	106.5	110.0	+ 3.3%

Source: State Labor Department reports.

The present approach to regulating imports of textiles and apparel has clearly failed. There are too many obstacles -- the diversification of production in the major exporting countries, the proliferation of foreign supply sources and the speed with which foreign shipments can be increased. The piecemeal administrative approach to regulating imports amounts to a never-ending and ultimately futile process of catch-up.

Indeed, considering that there are more than 150 fiber specific MFA product categories, and that more than 150 countries ship apparel and textile products to the United States, there is a vast universe of possible quotas.

All too often quotas have not been introduced until imports have risen to tremendously high levels. In many instances the Administration has moved very slowly. Import ceilings negotiated by our government have been excessively generous and are permitted to increase further, usually by considerably more than six percent a year. Even where quota growth is kept under six percent, unusually generous initial restraint levels are permitted. This provides for very high base levels from which to subsequently expand by what is claimed to be "reasonable" growth rates.

The fundamental problem is that in implementing the MFA the government's focus seems to be on limiting marginal quota growth rather than in restraining the volume of import shipments by setting quotas at reasonable levels in the first place. Regulating imports is transformed into a charade if the effective import growth is far above growth limits compatible with the avoidance of market disruption.

It is often contended by the Administration that a large percentage of all imports from low-cost suppliers is covered by quota. The critical fact, however, is that the present import penetration level is dangerously high. Even with a quota in existence, substantial import growth is still possible since quota levels often may be greater than current shipping levels. Quota ceilings also continue to increase even where shipments fall well below the restraint levels.

The bilateral agreements also contain provisions that allow quota levels to be exceeded, provided that a reduction in square-yards-equivalent (SYE) is made in one or more other categories. Quota may also be borrowed from future years, and unused quota carried forward. These provisions heighten the potential for sudden large import increases.

The available data make it evident that major damage has been done to the domestic industry and its workers by errors of commission and omission in the negotiation of bilateral agreements, calls and enforcement.

The original MFA recognized a six percent a year growth rate in bilateral agreements. Subsequent renewals accepted the need for lower growth rates for sensitive items. However, despite the ability to control import growth at rates much closer to domestic consumption than six percent a year, apparel imports have not only exceeded the six percent mark but have been rising dramatically.

INCREASES IN APPAREL IMPORTS, 1980 - 1986 (SQUARE YARDS)
(cotton, wool and man-made fiber)

1980 - 1981	+ 8.7 %
1981 - 1982	+ 7.9 %
1982 - 1983	+ 14.6 %
1983 - 1984	+ 21.7 %
1984 - 1985	+ 8.5 %
1985 - 1986	+ 13.3 %

Comparable data on imports of garments made of silk, linen or ramie are not fully available. However, even the partial data indicate that garments of these fibers, previously uncontrolled, grew astronomically. Were the data included with that for the 3 previously covered fibers, the recent growth rates would be 4 to 5 percentage points higher than those shown above.

Growth rates for apparel imports from individual countries have been more outrageous than even the world totals suggest. Major shippers continue to dominate the market while newer entrants have shown spectacular growth. For example, consider the following apparel import growth rates between 1980 and 1986: Taiwan 50 percent, Hong Kong 37 percent, South Korea 41 percent, China 323 percent, Indonesia 2967 percent, Singapore 155 percent, India 78 percent, Malaysia 572 percent, Sri Lanka 220 percent, Pakistan 345 percent and Thailand 138 percent.

In 1986, when our government claims so much restrictive activity took place, individual country shipments continued to soar. Shipments from China rose 67 percent, Turkey 51 percent, Indonesia 46 percent and Dominican Republic 31 percent to cite a few examples.

While apparel imports have been soaring relentlessly over the years, domestic output has been falling. The ILGWU Research Department compiles a series on physical volume of output of women's and children's garments based on U.S. Department Commerce production data. Between 1980 and 1986, physical output (measured in 1967 dollars) declined from $9,288 million to $7,700 million, a drop of 18 percent. This was a period when imports were more than doubling.

Import penetration has reached unacceptable levels in numerous major items of women's apparel. Imports account for approximately two-thirds of domestic consumption of sweaters, cotton coats and many types of blouses and knit shirts. Many other product areas are also marked by extraordinarily high import penetration, including brassieres, rainwear and cotton slacks and skirts.

In other product lines, such as dresses, playsuits and man-made fiber nightwear and underwear, where imports have traditionally played a less significant role, astronomical import surges of 40 to 50 percent or more annually have been experienced in the last two years. In short, the entire spectrum of women's apparel has been seriously undermined by an unrelenting wave of imported goods.

The Textile and Apparel Trade Enforcement Act was introduced in the last session of the Congress in an effort to restore order to the U.S. trade situation and to prevent further harm to the domestic industry. Some of those who opposed that legislation may have done so believing that legislative action was no longer needed -- that a renewed MFA and a sagging dollar was remedy enough. How wrong they were!

The MFA renewal in 1986 was but one more illustration of the unwillingness of the United States Government to take decisive action in support of our industry. Other than a partial coverage of previously uncovered fibers, MFA was left in an unchanged or even weaker condition than before. And our government showed no signs that it would change its policy and use its existing authority to adequately control apparel imports.

A significant reduction in the value of the dollar has taken place relative to the currencies of Japan and the countries of the European Common Market. These countries, however, are not key apparel shippers to the United States. Japan accounts for less than 2 percent and the entire Common Market group for barely 3 percent of our imports of clothing. In contrast, the dollar has remained high in value as against the currencies of the key nations exporting clothing to the United States, whether in the Far East or the Caribbean.

Only legislation can force our government to act in defense of the textile and clothing industries and its workers. It would be simple if comprehensive trade legislation such as H.R.3 could be effective in industries such as ours. If so, there would be no need to seek industry-specific legislation. Unfortunately, the remedies offered by H.R.3 have very limited application to labor-intensive industries such as ours.

There is little need for countries to sell clothing in the United States at less than cost. The terribly low wage rates paid in most of the clothing exporting nations permit the undercutting of U.S. costs even without benefit of subsidy. Hence, the barring of such unfair trade practices does little to level the playing field for apparel trade.

Similarly, foreign barriers to U.S. exports have little significance for the welfare of the domestic apparel industry. A large fraction of our exports consists of cut garment parts leaving the country for sewing abroad under Item 807.00 of the Tariff Schedules.

The problem we face is not a lack of competitiveness in design or productivity but an inability to compete with the sweatshop labor conditions in the countries that are the major shippers of apparel to the United States.

Lastly, there are relatively few jobs apparel workers can be retrained for. Most labor-intensive jobs, for which garment workers could be retrained, have similarly been destroyed by foreign production.

No matter how effective comprehensive legislation may be in solving the international trade problems of other industries it cannot solve our problem. We need industry-specific legislation.

The Textile and Apparel Trade Act of 1987 has been introduced in an effort to provide a minimally acceptable solution to our industries' problems. Its supporters have taken into account some of the objections raised to last year's legislation in drafting the provisions of the new bill.

The new legislation now covers all countries. Exclusions in the prior bill had led to charges of bias. The charge was groundless, but the new bill avoids the problem entirely.

The 1987 bill provides for a 1 percent growth in imports each year in each textile and apparel category. The starting point for each category is the level of 1986 shipments. There are no cutbacks, even for the largest shippers.

The President can allocate the global quota as he sees appropriate, taking into account the needs of the United States and the individual countries.

Lastly, the bill provides for a reduction of duty to compensate the exporting nations for the imposition of the quotas.

Low-cost imports threaten our living standards, particularly those of low income groups, by destroying badly needed employment opportunities for the U.S. apparel workforce. The workers in our industry are 85 percent female, many of them the sole supporters of their families. In the major cities, these workers are largely minorities -- Blacks, Hispanics, Asians -- and new immigrants. Throughout the rest of the country, where more than two-thirds of the workforce is located, the industry is concentrated in small towns, often one-factory towns. When a shop closes down in such areas, there is literally no other employment opportunity.

Sixty percent of apparel imports now originate in just four countries: Hong Kong with an applicable wage rate of $1.18 per hour; Taiwan at $0.57; South Korea, $0.63; and China, where a garment worker earns the U.S. equivalent of $0.16 per hour. Wages are similarly low in other Asian countries, such as Indonesia, Malaysia, Sri Lanka, Thailand and the Philippines, which have boosted their garment shipments to the U.S.

Despite the grand assumptions of theoretical economists, the use of low-wage labor abroad in garment production does not translate into lower prices paid by consumers. Retailers acknowledge they prefer to sell imported garments because of the higher markup taken on imports than on domestically produced goods. To cite just one of numerous examples, when asked by Women's Wear Daily whether retailers are really buying markups when they purchase imports, Allied Stores president Thomas M. Macioce responded, "Sure, we are indeed buying better markup, but that's our job. We would be delighted to buy only American-made goods if we could make the same type of markup". Invariably, imported garments retail for the same price as U.S. produced items of precisely the same design and style, with the difference padding someone's profits.

While the garment industry shares many problems with other industries, its simple technology, small capital requirements and dependence on relatively low-skilled labor make it particularly vulnerable to imports from low-wage countries. Recognition of this acute vulnerability to low-cost imports was an important justification for the special treatment that MFA accorded to the apparel and textile industries under the auspices of the General Agreement on Tariffs and Trade.

We must address the severe apparel and textile import situation before it is too late. The domestic apparel industry is unique and requires unique solutions to its trade problems. General approaches are not equal to the task.

Our industry, unlike so many others, employs large numbers of women, minorities, immigrants and so many others for whom few alternative employment opportunities exist. The work force in our industry includes many individuals with limited education and English language skills. These workers have very little opportunity for geographic mobility or retraining.

In many senses -- for example, the predominance of women, ethnic origins, and low skill levels -- U.S. garment workers are similar to their counterparts in third world exporting countries. As a diverse society we have a collective responsibility to ensure that our economy provides a full range of job opportunities.

The government's approach to implementing MFA has been made obsolete -- if it ever truly reflected domestic needs -- by vast changes in world apparel and textile production and procurement. We urge you to give careful consideration to the Textile and Apparel Trade Act of 1987 in the interest of developing a more rational and reasonable approach to our trade in textiles and apparel.

Mr. GIBBONS. All right. United Electrical, Radio and Machine Workers.

STATEMENT OF JOHN H. HOVIS, JR., DIRECTOR OF ORGANIZATION, UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, AS PRESENTED BY LANCE COMPA, WASHINGTON REPRESENTATIVE

Mr. COMPA. I am Lance Compa. John Hovis, our national director of organization, has also been unavoidably detained from attending the meeting. I will summarize his statement.

I was here a year ago talking on the subject of worker rights in the trade bill and was heartened by the fact that a strong workers' rights provision was included in the legislation. I am here again this year to urge that the worker rights protections also be included in the new bill and that this committee fight to include a strong worker rights provision in the bill.

I would urge you not to allow any other interests to make the workers rights provision some kind of bargaining chip that can be traded off for some other element of the bill.

We, in our union, recognize different countries are at different levels of development, and we are not protectionists in the sense we believe in stopping products from coming in because that country is less developed than the United States and can't afford to pay wages equal to what American workers make.

But we do feel it is necessary to recognize that in some countries the wage differential is increased not because of a lower level of development, but because the governments of those countries take specific actions to repress workers in that country, to forbid or hinder their organization of trade unions and collective bargaining which would allow them to raise their benefits and conditions of work.

Not, obviously, immediately up to our levels. We are talking more of getting wage differentials moving in the right direction.

We feel one goal of the trade bill should be to relieve the pressure on American workers to have to lower their standard of living in order to be internationally competitive. Instead, we should improve conditions in foreign countries so workers can raise their standards closer to ours to reduce that differential and the competition among workers.

I will try to give specific examples. We represent workers at wire and cable pants in Massachusetts and California and other parts of the country, too. On the average, they make five or six dollars an hour. They are not overpaid. They are not getting fat and happy, and they work very hard for those wages.

Yet, they have to compete, and in many cases jobs are being lost because of imports from Chile. But when you look at the conditions of workers in Chile, it is not again just because Chile is a less developed country than the United States. Union organizers have been jailed and killed and exiled in Chile.

Workers are forbidden to organize on anything else but a company-by-company basis, even a plant-by-plant basis if the same company has different facilities. They can't unite in some kind of industrial setting to try to improve standards in the country a a whole or the industry as a whole.

There are limits on strikes. A strike can only last 60 days, after which point workers are deemed to have abandoned their jobs and just walked away from them.

There are many other examples of specific repression against union officials, union organizers. The entire leadership of the copper workers union was removed by the government last year because of political activities and because they took an anti-government stance.

These and dictatorial decrees and what passes for laws in the dictatorship restrict trade union activities there, and we submit it is not fair for American workers to have to compete on that basis, on the basis that the Chilean workers can't organize and improve their wages and conditions because of the labor repression there.

We have a similar situation with respect to products made in Korea. I will defer to my colleague who will speak after me on the details of the situation in Korea.

But to tell you what we are up against, we represent workers at the Litton Microwave Oven plant in Sioux Falls, SD. We just negotiated a second contract at that plant.

We organized the plant in 1980. We had a very difficult struggle to obtain recognition and a first contract from that company. In fact, I think a strong case can be made about shortfalls in worker rights in the United States, but that is not a question before your committee and I won't ask you to take action on that.

But we have just achieved a second contract there which suggest some level of stability now in labor/management relations. And, again, those workers are not getting wealthy on their work at Litton.

They make $5.50 an hour to start off. Their wages go up to $9 for the most skilled workers, but for the bulk of the workers it is in the area of $5.50 to $6 an hour.

When they first organized in 1980, they were making minimum wage. So, thanks to collective bargaining, they have been able to improve wages and conditions. However, the strongest threat to their jobs now is the importation of microwave ovens made in Korea.

I will let you draw the conclusion after you hear from Mr. Harvey about labor conditions in Korea. To end, I want to say, we assert our union is not interested in shutting the door on foreign products. Many of our members produce for export, and we understand that that door swings both ways and we can't have it both ways.

We can't keep out foreign products and expect to send our products overseas. We think it should be a system in which workers feel a stake, both American and foreign workers, that they can see that their conditions of work and their standard of living can improve rather than be forced into competition with one another.

It is for that purpose that we urge a strong labor rights provision be included in the bill prepared by the committee and that the committee fight to retain a strong labor rights provision in the new bill in its final passage.

Thank you.

Mr. GIBBONS. I appreciate your saying that.

[The statement of Mr. Hovis presented by Mr. Compa follows:]

UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (UE)
STATEMENT OF JOHN H. HOVIS, JR., DIRECTOR OF ORGANIZATION
before the
SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
February 27, 1987

LABOR RIGHTS IN INTERNATIONAL TRADE

My name is John H. Hovis, Jr. I am Director of Organization of the United Electrical, Radio & Machine Workers of America (UE). Our union represents manufacturing workers in a variety of firms and industries including General Electric, Westinghouse, American Standard, Rockwell, Litton Industries, TRW and others.

A strong Labor Rights provision is critical to any trade legislation considered by Congress this year. We urge Congress to make violations of basic labor rights an unfair trade practice under U.S. law, in the same way that illegal subsidies and "dumping" are unfair practices.

The "social dumping" of goods made by workers unable to defend themselves against abusive working conditions can be stopped by a number of U.S. countermeasures. Better yet, a move to make labor rights violations an unfair trade practice could force governments that engage in such abuses to end their labor repression if they want to reach the American market.

The UE and other unions involved in the labor rights movement recognize that different countries are at different levels of development, and that products from such countries should not be excluded from the U.S. only on that basis. If we limit ourselves to complaints about "cheap labor" we make out foreign workers to be the enemy of American workers.

Instead of targeting "cheap labor," we should take aim at the conditions that create cheap labor markets. In fact, labor costs abroad are not always lower because a country is less developed. Some U.S.-backed governments deliberately crush trade union organizing and bargaining efforts which might raise wages and improve working conditions. The prospect of a "union-free environment" resulting from such oppression is a powerful lure to U.S. corporations looking for offshore production sites.

But no company should gain a competitive advantage in world trade because it operates in a country where authorities jail and kill workers who try to form unions, or where dictatorial laws ban strikes, organizing and genuine collective bargaining. And yet, such unfair competition is tolerated, and even encouraged, by our own government.

In the name of free trade, American workers must compete with steel and autos from Korea, copper and copper products from Chile, appliances and electronics from Taiwan, and other goods from countries that systematically violate workers' rights.

Let me give you some examples of what our union faces. UE members at the Columbia Electronic Cable company in New Bedford, Massachusetts and at Industrial Wire Corp. in Los Angeles, California manufacture cable and cordset products for the electrical industry. They compete with the same products made by companies in Chile.

Is it fair competition, though, when in that country thousands of union organizers have been or are being imprisoned, tortured, exiled or killed by the Pinochet military regime? The entire leadership of the copper workers union has been ousted by the government. Union offices are routinely ransacked by police.

Unions may only function in the single workplace;

coordinated company-wide or industry-wide bargaining is banned. Strikes may only last sixty days, then workersare deemed to have abandoned their jobs. What is at work, therefore, is not the famous theory of comparative advantage touted by free market economists. It is a practice of comparative repression that is destroying our members' jobs along with Chilean workers'lives.

The situation in Korea is much the same, and it affects UE members at the Litton microwave oven plant in Sioux Falls, South Dakota who face stiff competition from Korean-made ovens. Workers at the Sioux Falls plant organized into our union in 1980. We have just settled a second contract there,indicating a stable labor-management relationship after some rough early years. Now those workers make between $5.92 and $9.42 an hour, compared to minimum wages when they first organized.

But what do their Korean counterparts face? All the genuine, independent unions there were abolished by government decree last year. It is illegal for workers to seek help from allies in church, social or political organizations. Strikes are outlawed in so-called "strategic" industries, which encompass most basic industry.

Individual workers who protest labor conditions or who organize to improve conditions are fired and blacklisted -- if they are lucky. Others are jailed, tortured, exiled or killed.In 1986 there were several documented cases of young women workers being sexually abused by their jailers after labor protests. Each week brings new accounts by church and human rights organizations of repressive police action against workers.

Similar accounts of labor rights violations mark reports from Singapore, Taiwan, Haiti, Paraguay, Malaysia, Indonesia and other countries that welcome runaway shops from U.S. multinationals. In

UE's view, any member of Congress who opposes a strong Labor Rights clause in the trade bill is saying, in effect: the way for the United States to compete in world trade is to lower the standard of living of American workers. We believe instead we should help foreign workers raise their standards closer to our own -- not by decree, not by an artificial equality, but by ensuring that workers have the basic right to organize and bargain collectively to improve their wages and conditions.

We further urge that the same standard for labor rights in international trade be applied equally in all countries sending products to the United States. It is unfortunate, for example, that the Administration found labor rights violations, for purposes of affording benefits under the Generalized System of Preferences, only by Nicaragua, Romania and Paraguay, ignoring compelling evidence of violations in Chile, South Korea, Taiwan, Guatemala, Haiti and other countries. New trade legislation must guard against such politically-motivated application of the law.

Labor rights in international trade is not "back door protectionism," as critics charge. Our goal is not to keep out foreign products, but to force governments that violate labor rights to end their repression if they want to reach the U.S. market. Likewise, if foreign workers have the opportunity to form effective unions, U.S. multinational corporations will not be so eager to move jobs abroad to take advantage of labor repression. In the end, all workers will have more confidence in an open trading system that gives them a voice and a stake in international trade, not a system that just caters to the needs of the corporations. To accomplish this, a strong Labor Rights provision must be included in the new trade bill.

STATEMENT OF PHARIS J. HARVEY, EXECUTIVE DIRECTOR, NORTH AMERICAN COALITION FOR HUMAN RIGHTS IN KOREA, AND ON BEHALF OF INTERNATIONAL LABOR RIGHTS WORKING GROUP

Mr. HARVEY. My name is Pharis J. Harvey. I am the executive director of the North American Coalition for Human Rights in Korea and today speak also as a representative of the International Labor Rights Working Group. On behalf of the Protestant and Catholic agencies which form the North American Coalition and the human rights, religious and labor organizations which together constitute the International Labor Rights Working Group, I want to thank your committee for including in this hearing the perspective we have on this subject. We do not represent an economic interest in this issue but have an interest in overall foreign policy supportive of workers' rights both in this country and overseas.

The International Labor Rights Working Group consists both of organizations focused on the rights of workers in this country and those whose primary purpose is international human rights. It was formed in 1982 by a number of human rights organizations and labor unions to advocate for more effective legislation dealing with human rights overseas, particularly the rights of workers. In 1984, we succeeded, thanks to the hard work of your committee and leadership of Mr. Pease, in gaining passage of such legislation. We work on these rights both in the United States and overseas because we believe there is an essential linkage between welfare and justice for workers in this country and other countries.

The provision of the pending trade bill we would like to address is the amendment to section 301 proposed by Mr. Pease last year, passed in the House, and we would like to urge your support once again.

Few efforts to cope with the serious trade problems of the United States have so rightly addressed the plight of the American worker as has this proposal. It recognizes American workers are being pitted against foreign workers in an international production and trading system which is destroying the rights of both, by undermining their ability to protect a safe working environment and a decent wage through collective bargaining and protection of a safe working environment.

Second, it is right because it has universal application. Unlike some other trade remedies being proposed, it penalizes no nation simply for having succeeded in trading with the United States. Rather, it targets for countermeasure those few countries which have unfairly penetrated the American market with goods produced under conditions kept below a decent level by government actions to suppress workers' rights.

And, third, it is right because, unlike yet another group of proposed trade remedies, it does not attack foreign competition based simply on lower wage costs. Wages are, of course, set by many factors, including general economic level, cost of living, labor availability, skill levels, et cetera. What this proposal attempts is to remove from that equation the factor of political repression, to allow the economic and social factors to function without being artificially repressed at the point of a gun.

This labor provision is not a quick fix. However, it does contribute to an important long-range adjustment in the rules of trade, redressing the disadvantage that countries such as the United States which respect workers' rights now face in competition with the ruthless, repressive regimes that are gaining market shares worldwide by forcing their workers to accept sub-human wages and working conditions, often in partnership with U.S.-based multinational companies that continue to move production around the globe in search of the cheapest labor costs.

Thus, along with the provision to define labor repression as an unfair trade practice, this bill directs the administration to negotiate within the current GATT round for a multilateral agreement on a social clause.

We believe that both aspects of this provision should be supported. Section 301 enables the U.S. Government to take measures to counter particularly offensive practices toward workers overseas and to demonstrate its concern with some genuine leverage to seek improvements. GATT agreement on a social clause would provide a framework in which those labor rights provisions can continue to be further refined and uniformly enforced.

It has been suggested by some administration spokespersons that this provision is an attempt to force U.S. labor standards on the world. That argument is, as the distinguished members of this committee know well, completely spurious. The labor standards which are referred to in this law have a long history of acceptance and compliance not only by the United States but by a majority of the nations of the world, which have codified them in international law through the International Labor Organization and other multilateral intergovernmental bodies.

The first four basic rights enumerated in this bill, namely the right to organize freely and to bargain collectively, freedom from forced labor, and protection of children in the work force, have each been defined in ILO Conventions ratified by more than 90 nations, and are paralleled by U.S. law in those areas unratified by the United States for reasons of constitutional delegation of powers in our Federal system. The fifth area, "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health", is less uniformly codified than the others, due to greatly varying levels of development and cultural differences, but has been found to be a good index of the level of labor repression when viewed in conjunction with the other four rights.

The current administration has, in fact, already endorsed the concept of international labor rights in its decision to enforce the labor rights provisions in the Generalized System of Preferences. In January of this year, Nicaragua, Paraguay, and Romania were removed from that program due to the administration's judgment that labor rights in these countries did not meet these same international standards.

The experience of the first 2 years of the revised GSP program is illustrative. Despite an attitude in the Reagan administration that could at best be called reluctant to enforce the labor rights clause, governments such as South Korea reacted with such sensitivity that the entire subject was forbidden from mention in the Korean press during the 2-year long GSP negotiating process. Every other matter related to that was wildly discussed in the press, in great exaggeration, as a matter of fact.

Labor rights was never mentioned as a matter between the United States and Korea. The U.S. Department of Labor suggested a set of fairly minor remedies that would be acceptable to the administration. Those remedies were taken in a lightening-quick passage of bills in the National Assembly with the opposition locked out of the assembly hall just two weeks before the GSP decision was announced by President Reagan. Had the Reagan Administration addressed more serious labor law changes than those which it asked for, we can be sure that the Korean Government would have responded with more serious answers. Labor rights is an important tool in the improvement of human rights.

In my testimony, I have gone into considerable detail as to the nature of the repression of labor in Korea. Without taking your time now, I would urge you to examine that as the basis for why we believe these provisions will address the serious repression of labor in Korea and countries like it.

Thank you very much, sir.

[The statement of Pharis J. Harvey follows:]

PREPARED STATEMENT OF PHARIS J. HARVEY, EXECUTIVE DIRECTOR NORTH AMERICAN COALITION FOR HUMAN RIGHTS IN KOREA

to

THE WAYS AND MEANS COMMITTEE SUBCOMMITTEE ON TRADE
U.S. HOUSE OF REPRESENTATIVES

February 27, 1987

Thank you, Mr. Chairman, for the opportunity to testify before this committee once again on the important matter of improving laws which address unfair trade practices. My name is Pharis J. Harvey. I am the executive director of the North American Coalition for Human Rights in Korea and today speak also as a representative of the International Labor Rights Working Group. On behalf of the Protestant and Catholic agencies which form the North American Coalition, and the human rights, religious and labor organizations which together constitute the International Labor Rights Working Group, I want to thank your committee for including in this hearing the perspective which we represent.

The International Labor Rights Working Group consists both of organizations focused on the rights of workers in the United States and those whose primary purpose is international human rights. We believe there is an essential linkage between welfare and justice for American workers and workers in other countries, and have advocated for legislation which strengthens the protection of international labor standards both here and abroad.

The provision of the pending trade bill we would like to address is the amendment to Section 301 first proposed by Representative Don Pease last year, which defines the trade advantage derived by a foreign government's repression of internationally-recognized workers rights as an unfair trading practice and authorizes the President to take counter-measures to lessen its damaging trade impact on U.S. business and labor. That provision, which passed the House last year, is once again before you, and once again, we would urge your support.

As I testified last April before this committee, few efforts to cope with the serious trade problems of the United States have so rightly addressed the plight of the American worker as has this proposal. It is right for several reasons. First of all, it recognizes that American workers are being pitted against foreign workers in an international production and trading system which is destroying the rights of both, by undermining their ability to protect a safe working environment and a decent wage through either collective bargaining or the enforcement of legal standards. Few fail to recognize that the development of an international division of labor which takes advantage of the mobility of capital to shift production to countries with repressive labor conditions has undermined and weakened the American labor movement, and lowered the standard of living for millions of American workers in the past few years.

Second, it is right because it has universal application. Unlike some other trade remedies being proposed, it penalizes no nation simply for having succeeded in trading with the United States. Rather, it targets for counter-measure those few countries which have unfairly penetrated the American market with goods produced under conditions kept below a decent level by government actions to suppress workers rights. It counters what has rightly been called "social dumping," using social repression to gain unfair trade advantange.

And third, it is right because, unlike yet another group of proposed trade remedies, it does not attack foreign competition based simply on lower wage costs. Wages are, of course, set by many factors, including general economic level, cost of living, labor availability, skill levels, etc. What this proposal attempts is to remove from that equation the factor of political repression, to allow the economic and social factors to function without being artificially repressed at the point of a gun.

We do not believe that this labor provision by itself is an adequate answer to the serious disequilibrium in world trade. It is not a quick fix. We do, however, believe, that it contributes to an important long-range adjustment in the rules of trade, redressing the disadvantage that countries such as the United States which respect workers' rights now face in competition with the ruthless, repressive regimes that are gaining market shares world-wide by forcing their workers to accept sub-human wages and working conditions, often in partnership with U.S. based multinational companies that continue to move production around the globe in search of the cheapest labor costs. Until and unless the international trading system takes measures to redress unfair labor practices in the same way it has corrected unfair use of national capital or taxation to influence trade, American workers will continue on a downward slide into unemployment and poverty. Recovering competitiveness for American workers requires more than re-training them for new kinds of work. It requires the recovery of fair international conditions in which they compete. The labor rights amendment attempts to do this.

It is also certain that the United States cannot combat the rising tide of labor repression in newly industrializing countries solely through unilateral measures such as Section 301 trade remedies. Thus, along with the provision to define labor repression as an unfair trade practice, this bill directs the Administration to negotiate within the current GATT round for a multilateral agreement on a "social clause."

We believe that both aspects of this provision should be supported. Section 301 enables the U.S. Government to take measures to counter particularly offensive practices toward workers overseas, and to demonstrate its concern with some genuine leverage to seek improvements. GATT agreement on a "social clause" would codify a multilateral approach to the problem and help to bring about uniform and fair enforcement.

The GATT proposal has been heatedly resisted by many governments, especially those which have gained trade advantage through the inhibition of labor rights. It has also been resisted by governments who fear it is a kind of "camouflaged protectionism" that would be used selectively as a weapon against countries with trade surpluses. We recognize that if unfairly administered, this provision could, like any other trade remedy, become a protectionist tool. However, the likelihood of abuse of the labor rights provision is no greater than that of other types of unfair trade practice remedies. In fact, we believe that the adoption of multilateral agreements will lessen any temptation to apply it in an unfair manner.

We also believe that, by adopting the labor rights standards in Section 301, we will be signalling to our trade partners our seriousness about combatting the kind of abusive labor conditions that are destroying the human dignity of workers overseas and undermining the rights of workers at home.

It has been suggested by some Administration spokespersons that this provision is an attempt to force U.S. labor standards on the world. That argument is, as the distinguished members of this committee know well, completely spurious. The labor standards which are referred to in this law have a long history of acceptance and compliance not only by the United States but by a majority of the nations of the world, which have codified them in international law through the International Labor Organization and other multilateral intergovernmental bodies. The first four basic rights enumerated in this bill, namely the right to organize freely and to bargain collectively, freedom from forced labor, and protection of children in the work force, have each been defined in ILO Conventions ratified by more than 90 nations, and are paralleled by U.S. law in those areas unratified by the United States for reasons of constitutional delegation of powers in our federal system. The fifth area, "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health," is less uniformly codified than the others, due to greatly varying levels of development and cultural differences, but has been found to be a good index of the level of labor repression when viewed in conjunction with the other four rights.

The current Administration has, in fact, already endorsed the concept of international labor rights in its decision to enforce the labor rights provisions in the Generalized System of Preferences. In January this year, Nicaragua, Paraguay and Rumania were removed from that program due to the Administration's judgment that labor rights in these countries did not meet these same international standards. Chile was placed on notice to make improvements within the next year or face loss of beneficiary status.

Other critics of this provision, concerned with getting some real and immediate progress in U.S. trade relations, have expressed doubts about whether these labor rights provisions would lead to sufficient reform fast enough. Certainly no major reforms will occur unless the Administration indicates to our trading partners its serious interest in implementing this law. With lackadaisical enforcement, the provision will of course have minimal effect. However, even a lackluster *pro forma enforcement of the GSP-related labor rights provisions* has demonstrated the power to put repressive governments on notice and wring at least token responses from them.

The experience of the first two years of the revised GSP program is illustrative. Despite an attitude in the Reagan Administration that could at best be called reluctant to enforce the labor rights clause, governments such as South Korea reacted with such sensitivity that the entire subject was forbidden from mention in the Korean press during the two-year-long GSP negotiating process. Every other aspect of trade-related conflicts between the U.S. and South Korea, such as import restrictions, intellectual property rights or barriers to U.S. investment, received widespread coverage in the Korean press. Labor rights was never mentioned, either in the news or to opposition members of the National Assembly, who were kept unaware of any pressure from the Reagan Administration to improve Korea's labor rights.

Nevertheless, following almost to the letter recommendations from the U.S. Department of Labor, the Chun Doo Hwan government agreed in late December last year to several minor improvements, about two weeks before the GSP decision was announced. These included allowing national unions to advise local unions in conflict resolution and the adoption of a plan to establish, sometime in the future, a minimum wage system and to budget for more adequate factory safety inspections. These few steps were considered by the Administration as sufficient to qualify Korea for beneficiary status, despite the fact that the State Department in its just-published **Human Rights Country Report** concludes that "these (labor) rights are circumscribed by both labor-related laws and practice", and notes the widespread imprisonment of workers in connection with labor disputes. Had the Administration insisted on more substantive steps, it is quite likely that Korea would have complied with some genuine improvement. If these measures had been demanded in connection with overall trade access and not just in the GSP program, the incentive for real labor improvement would have been considerable.

A final criticism of the labor rights clause is based on the idea that repression of labor rights is basically a function of the level of development. The poorer a country, the worse its labor practices are assumed to be, according to this view. With general economic growth, the protection of labor rights will gradually improve. Thus steps to pressure governments to improve workers rights prematurely only impede the progress and actually hurt the workers, it is argued.

This thesis, advanced by a number of newly industrializing countries such as South Korea, is persuasive at first glance. However, the Asian experience is rather different. Some of the poorest countries in Asia such as India and Papua New Guinea have carefully protected labor rights both in law and practice. The most serious abusers, on the other hand, are the moderately wealthy export-driven industrializing economies such as South Korea and Taiwan, and to a lesser extent, Indonesia and Thailand. Labor abuse appears to be primarily a function of a type of development, not the level. And it appears to be the product of specific government decisions to suppress wages and domestic consumption for the sake of lowering export costs.

Let me turn briefly to what this means for workers in Korea. South Korea has, according to the ILO, the longest average working hours in the world, and one of the highest industrial accident and death rates. Studies by the U.S. Department of Labor show South Korea to have the lowest wages of some twenty industrial countries. Last year, nearly one thousand workers and labor union organizers were imprisoned for activities protesting the government suppression of workers' rights. According to the State Department, despite laws restricting minors under age 18 from work except under carefully regulated conditions, "the employment of minors is widespread, particularly in labor-intensive industries such as textiles, footwear, and small electronics assembly, and abuses of legal protections are common."[1]

Furthermore, the use of brute force by companies or government to prevent the formation of labor unions is endemic, and growing dangerously. In 1986, through the middle of November, the North American Coalition received reports of 919 laborers arrested, 47 labor union organizers fired, 161 workers beaten by police or company-hired thugs seriously enough to require hospitalization, 24 workers tortured in prison, 9 suicides by workers to protest conditions, and one worker murdered while in police custody. In addition, 17 major incidents of police interference, disruption, harassment or blockage of church ministries to workers were recorded during this period. In the middle of November, every labor organization not related to the essentially government-controlled Federation of Korean Trade Unions, was ordered by the government to disband. This included fourteen organizations, including city labor federations in Seoul, Inchon, Anyang, Kuro Industrial Complex and elsewhere, the Christian Labor Federation, the Chun Tae Ill Memorial Labor Center, and five church-based night schools for workers. At the year's end, the National Council of Churches in Korea estimated that 150 or more laborers remained in prison, charged in incidents related to labor unrest.

A chronology of labor incidents in South Korea in 1986 is submitted with this testimony. I would be pleased to have it entered into the record.

These abuses of labor rights are made possible by a legal structure which was amended in 1980 to destroy the industrial union structure, divide the labor movement into thousands of individual company unions and make it virtually impossible for workers to organize new labor unions or to seek legal redress of grievances, by the wholesale purging of the labor movement's leadership, and by a vast increase in the number of secret agents and police to conduct surveillance and control of the labor movement. Changes in the law also deprived workers in local factories of almost all assistance from national unions or civic organizations, particularly from the religious groups, both Protestant and Catholic, which had attempted in the 1960s and 1970s to assist newly urbanized workers adapt to an industrial environment and protect their legal rights. This structure is also abetted by a computerized "blacklisting" system, which enables the police to track and have fired any newly hired workers who have a history of involvement in labor union activity. Thousands of workers are said to be listed in this manner. They are being driven into an underground culture of radical protest out of desparation to survive. In 1986, dozens of workers were imprisoned for attempting to thwart this blacklisting system by seeking employment using false identity cards.

The "reforms" announced at the end of 1986 in response to pressure for eligibility for the GSP program only slightly modified this structure, both positively and negatively. On the positive side, national unions are no longer considered "third parties" proscribed from contacting local labor unions, although the churches continue to be banned from any such activity. Foreign-owned companies are no longer privileged with special bans on strikes beyond the almost total ban which affects all Korean-owned companies. On the negative side, the coal mining industry, one of the most strife-torn and accident-ridden, has been declared off-limits to labor unions.

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[1] 1986 Country Reports on Human Rights, p. 757.

During 1986, South Korea saw a growth in its gross national product in excess of 12 percent, and a growth in trade imbalance with the United States to over $6 billion. These facts are not unrelated. Despite the recent increase in exports to the United States of higher technology products such as automobiles and computers, the preponderance of Korean exports continues to be in products made in labor-intensive industries with extremely low wages and the full panoply of police power available to keep them low.

It is this level of human misery, the hidden underside of the so-called "economic miracle" of Korean development, that from a human rights perspective this legislation attempts to address. But this is not solely for idealistic or altruistic reasons. Our democratic values can only be sustained in an international climate where they are shared. The same is true of our prosperity, as we are coming increasingly to recognize when we notice the standard of living of American workers declining in the face of overseas competition. This legislation, perhaps more adequately than any other existing instrument of human rights policy, demonstrates that linkage between our own level of justice and welfare and that of our neighbors. For the sake of workers both in the United States and in countries like Korea, where repression of the many is enriching the few, I urge you to support the labor rights provisions of the 1987 Trade and Economic Policy Reform Act.

Thank you.

Chairman GIBBONS. Thank you for your very, very fine statement. You will be assured I will read it. I know we are plowing new ground here, but it has got to be plowed. We can't go into the next decade of these matters without looking seriously at wages and working conditions and ability to organize, repression and things of that sort. I really don't understand the opposition to this, frankly.

Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman. My thanks to our witnesses.

Mr. Starobin, I appreciate your testimony. We have been following with great interest the problems of the textile and garment industries and the new bill that has just been introduced on your behalf.

You mentioned the No. 1 problem of your industry is low wage compensation, extremely low wages paid to those in particularly Asia who are competing against you. You did not mention in your testimony specifically the worker rights language that was in the trade bill last year and is in H.R. 3 this year. Could you tell me, is that a conscious omission on your part? Does your union have a position on that section?

Mr. STAROBIN. Yes, we certainly do. We are deeply concerned about this question. The only real problem in a very practical sense is the timing.

Now, obviously, it is in the interest of all workers for workers around the world to enjoy reasonable living conditions, the right to organize and so forth. We are faced with extinction in the next 4 to 6 years. At the rate at which we are letting imports of apparel come into the United States, we have at best another half dozen years before the industry is dead. In that timeframe, it is highly questionable whether we could enforce those provisions which we obviously support.

In all of my traveling through Southeast Asia, China, Japan, and so forth, I have been in touch with trade unions to the extent they exist, Mr. Pease. The circumstances are horrendous. I have seen child labor, prostitution, the worst kind of working conditions. The only question in my mind is how quickly can we enforce changes and can we enforce changes with countries that we deem to be sovereign? Clearly, we support that amendment.

Mr. PEASE. Thank you very much. I think your analysis of the timing is correct. Obviously, this worker rights language is not going to bring people in Third World countries up to our level, or even close to it, any time short of 15, 20, 25 years probably. Your problem is a short-term problem. So I would promise you that I would not look upon the worker rights language as a substitute for your efforts to provide immediate protection for your industry or relief for your industry.

If you could get your compatriots to understand that also, I think it might be in your interest as an organization to take a position actively in favor of this workers' rights language for the longer run.

Mr. Gibbons this morning had a spirited exchange with a representative of the textile industry where he was lamenting the fact your current bill has no termination date. I think it is at least possible that whatever protection you have now under the MFA or will get would not last forever, and sooner or later the industry will have to compete on its own terms.

It seems to me at that point it would be very helpful if you were competing with people overseas who had workers with these basic rights to organize and bargain collectively and so on. It is not a lecture.

Mr. STAROBIN. May I comment, Mr. Pease.

Mr. PEASE. Surely.

Mr. STAROBIN. Obviously, we are interested in protecting worker rights. Our argument is not with the workers in low wage countries. Our argument is with the policy that has been followed by our Government with respect to the apparel industry of the United States.

I might add, parenthetically, that, as I indicated earlier, I have spoken with trade union people throughout Asia, to the extent that they exist, and I would like to relate just one incident to you, and that is a discussion I had 15 months ago in Dacca, Bangladesh, with the head of the trade union movement there.

He said to me: "You know, I am in favor of the Jenkins bill." And I said to myself, I am glad I am sitting down when he says this. I haven't heard this from any trade union person in Asia before.

But why are you in favor of the Jenkins bill?

And he described at some length the indentured servitude that exists in his country, and the fact that young girls, who have never been in the labor force, are forced to sign agreements in which they guarantee they will pay their employer the equivalent of a year's wages—at 10 cents an hour—if they leave after a training period.

And his argument was essentially this. None of the products that are produced in Bangladesh in the apparel industry enter the domestic market.

None of the profits enter the domestic market. The money is all shipped abroad into foreign banks. I thought to Swiss banks; but he said, any bank abroad. The money is brought back by the very small elite to fill its needs for Mercedes, and entertainment, and food and so forth. None of it enters the domestic economy.

The real question is, if the purpose of the policy of allowing imports into the United States—and we gave Bangladesh a 900-percent increase early in 1986 in certain categories—if that purpose is to encourage capital formation in Bangladesh, let me assure you that it is not being done.

And that really is another aspect of this same problem, Mr. Pease.

Mr. PEASE. Mr. Starobin, I am delighted that we entered into this colloquy. Because you have raised a very important point in favor of this whole worker rights effort. An important tenet of free trade is "a rising tide lifts all boats," and that everybody benefits from free trade, and you have described a situation where that is not correct.

I am afraid that situation is all too common in Third World countries, where in the guise of free trade, people are working at starvation wages, and the beneficiaries are not the people of those countries. They don't get more money.

They don't get better standards of living. But the owners of multinational corporations, who are operating outside those nations—and if we are going to cause American workers to suffer and lose jobs in the name of free trade, at least we ought to make sure that workers in other countries get some minimal benefit from that process. So you have made the case, broad-end case, it seems to me, for supporting this language.

Thank you.

Mr. STAROBIN. Thank you.

Mr. PEASE. Mr. Compa and Mr. Harvey, I don't have any questions for you.

I would just like to thank you both for your testimony.

Mr. Compa, thank you for your specific illustrations of how American workers are being paid quite ordinary wages and find their jobs in jeopardy because of competition from overseas.

So often the opponents of any protection at all for American workers allude to the fact that you have got American workers making $25 or $26 an hour, and they are inefficient and overpaid, and why should we protect them. But in the textile industry, in the garment industry, and in the others that you have mentioned, time after time, is that these are workers making $5, $6 or $7 an hour, and working pretty hard to earn that amount of money. We can hardly blame those workers for the situation that they are in.

They are at a disadvantage because of the extremely low wages inflicted upon the workers of those countries by the political system, and not by general economic conditions, but by the political system.

Mr. Harvey, you have been long toiling in the vineyard of human rights, particularly in relationship to South Korea. I thought your testimony was just excellent, made the case, provided the historical perspective, everything one could ask for in superior testimony. So I want to thank you for that testimony today, and for your longstanding support of human rights.

Thank you.

Chairman GIBBONS. I agree, Mr. Pease, that the textile and garment industry is a lot different than some of our other American industries that are in trouble. And I would like to find out in the garment industry do you think you can ever be competitive without being protected?

Mr. STAROBIN. Congressman, it depends upon how you define competitive. If competitive means meeting the wage levels of Southeast Asia, I would say absolutely not.

Chairman GIBBONS. I am not talking about that. Can you be competitive and maintain employment and not be just overwhelmed by foreign goods?

On the other hand, do we have to have legislation with no end to it and, perhaps, inefficient legislation too, in order to preserve textile, I mean garment worker jobs in this country?

Mr. STAROBIN. Mr. Gibbons, since our apparel market is so heavily penetrated by imports, what we are only really asking for in this legislation is the right to maintain a share that is roughly less than half of the domestic market. We are not saying roll them back.

We are not saying we want 75 percent of the market. We are ready to take it as it exists today at 45 percent of domestic consumption, in order to insure jobs for current workers who have very few alternative job opportunities within our society.

It is a characteristic of labor intensive industries that they are in many ways unique because of the composition of the work force and because of job availability.

I could say to you, Mr. Gibbons, that I would be perfectly prepared to say to the administration and to the Congress wipe out the apparel industry, as you are doing with my blessing, on one condition, that you truly provide alternative employment for these people.

Chairman GIBBONS. I don't want to wipe out the American apparel industry. All the clothes I wear are made here in America.

You know I don't particularly go out and shop for that, but I just went through the closet the other day. I hear about these heavy penetrations of clothing and I looked at all of my wife's clothing, at all of my clothing, and there are a couple of foreign labels in them.

I guess it's people not in my income category that are buying the foreign clothing. I don't challenge any of the figures, but I don't want to have to go abroad for this suit.

If it is not made in America, it certainly is mislabeled, and so is everything else I have got on mislabeled. I don't believe that that is so. And I was just looking through my own closet, Mrs. Gibbons closet.

I would like to find some way of making the garment industry competitive that didn't involve quotas. I think quotas is just a very terrible way. First of all they haven't worked.

They haven't worked for you all. There must be a better way. I would rather go as I said to Mr. Jenkins back to increasing tariffs, if that is what it is going to take, on a temporary basis, until we can get the situation straightened out, but I think quotas are clumsy and expensive and inefficient and then don't work either. So that is a problem that I run into.

And then you have got the textile industry, which is pretty profitable, piggy-backing on the garment workers. The textile industry has its ups and downs. I can remember during the 1970s they were so profitable that we were almost getting complaints from our foreign competitors that we were being unfair to the textile industry.

I know you all have a license, and that is perfectly legal in America, and perfectly aboveboard and honest, but they are piggybacking on you and asking for what I think is exorbitant protection. If we do for the textile industry what they are asking, there is just nobody in the United States that we can say no to as far as quotas are concerned. And I think that would be a perfect disaster for our country, and that is the reason why I take the hard-nosed line that I do.

I would like to find something though that would make the garment folks eventually competitive or offer some reasonable protection so that you are viable, because we do need garments and we do need garments that are made in this country.

As an old soldier I know you can't get along with just a blanket. You need all the other things that go with it. I hope we can find some solution to that.

Mr. STAROBIN. Mr. Gibbons, may I just comment on the tariff aspect that you suggested as an alternative?

Chairman GIBBONS. Yes, sir.

Mr. STAROBIN. Rather than the alternatives and the points that you raised, the crucial point to us is that a third of the wholesale cost of a garment made in the United States is the labor that goes into it.

Chairman GIBBONS. I realize it is a very small part.

Mr. STAROBIN. That is a considerable part of it, because you have one-third labor, one-third material and one-third overhead and profit. It is that labor component with which we cannot compete without lowering our own living standard.

For example, if we were to raise our tariffs 300 percent with respect to imports from the Peoples Republic of China, where the average garment wage level is 16 cents an hour, the tariff would be roughly the equivalent of a 48 cents an hour wage rate. We could not compete with 48 cents an hour labor.

That really is the issue. We don't favor quotas, because we like the word. We are looking for quotas because we see few, if any—actually no—alternative to some kind of control to preserve jobs in our own country as, by the way, every country in the world has done as a matter of practice.

No one practices free trade, as you well know.

Chairman GIBBONS. Oh, I know no one practices free trade. It is an objective rather than a fact.

Mr. STAROBIN. But meanwhile people need employment. That is the problem, and I would be very happy to hear any alternative to a new textile and apparel bill for instance, if it is a feasible alternative. I don't see any that is feasible.

Chairman GIBBONS. I think the textile people are piggy-backing along on you. You have got a problem, you have got a real problem, but I think you have got somebody—they are not a labor intensive operation, textiles are not.

Mr. STAROBIN. That is correct.

Chairman GIBBONS. But they are disguising themselves by hiding under your skirts, so to speak, and getting a free ride. You can't do anything about it, but I think they are taking advantage.

Mr. STAROBIN. I would submit to you, Mr. Gibbons, 45 percent of the textile industry's output is in apparel fabric. If the apparel industry loses out in this country, the textile industry loses 45 percent of its sales. This coalition that we have has been in existence for more than 20 years as a recognition of a least common denominator. They have their aspects of the problem, we have ours, but they coincide.

Chairman GIBBONS. But do you both need the same solution to the problem? If you want to work together that is perfectly American, but do you both need the same solution?

Mr. STAROBIN. Mr. Gibbons, as a former businessman, where I have spent most of my life, I would hate to see a situation in which I lost 45 percent of my business within a date certain which mathematically comes to somewhere between 1990 and 1992.

Chairman GIBBONS. I am trying not to say that.

Mr. STAROBIN. And I think the textile industry is looking at it from that point of view.

Chairman GIBBONS. I think if you didn't have the piggy-back rider to protect the industry, the garment industry, I think you could probably get a more favorable and more workable solution to the problem of preserving the garment industry.

Mr. STAROBIN. Would you support such legislation, Mr. Gibbons?

Chairman GIBBONS. Well, I have never seen any, but I would like some thinking along that line. Do we need the same remedy for a process that could be highly automated, mechanized and that we do for a very labor intensive operation?

There is nothing in the world wrong with you all having a coalition, and I don't criticize you for that. But it does seem that they are piggy-backing on the fact that you are currently labor intensive and probably always will be labor intensive, because of the various sizes that must be manufactured, and because of the nature of working with garments and sewing them together.

It looks like to me for the foreseeable future you are always going to be highly labor intensive. But I don't see that in the textile industry, in the textile industry, at all. And it looks to me like they are probably inhibiting a satisfactory solution to your problem by just piggy-backing on you.

Mr. STAROBIN. I think they are trying to preserve half of their sales.

Chairman GIBBONS. That is what they say.

Mr. STAROBIN. And incidently, the textile industry employs about 750,000 production workers.

Chairman GIBBONS. I would be more inclined to be sympathetic to the garment industry and to a solution to their problems, but I can't see that we can apply the same solution to the garment industry, or the textile industry, because they are really—the process is just a lot different between manufacturing cloth on a loom and sewing garments together.

Mr. PEASE. Will the Chairman yield?

Chairman GIBBONS. Certainly.

Mr. PEASE. I hadn't intended to get into this discussion, but it does raise with me some questions that I sort of had in the back of my mind for a while, and maybe you can help me with them.

Do you have any notion—the chairman has a plane to catch—can you give me any idea of what the difference is in productivity between, say, an American garment worker and a PRC garment worker, wage levels aside?

In other words, we have been able to compete in a lot of industries in the United States because we are more mechanized. We use automated equipment and so on, so even though our wages are higher, the unit price is about the same.

Clearly it is difficult for that to happen in the garment industry. A lot of it is handwork.

Is it true that your level of productivity is about the same, no matter what, that the hand operations—might you be twice as productive or have a gain in productivity because of mechanization as someone from the PRC or South Korea or whatever.

Mr. STAROBIN. I think, Mr. Pease, that the only difference in mechanization is that we use Singer sewing machines and they use Japanese Juch machines. The workforce of the industry throughout the world is essential semiskilled workers.

I would judge that our productivity is somewhat higher than it is elsewhere, simply because of highly competitive nature of industry in the United States. Up until about 4 or 5 years ago there were 25,000 individual employers in the United States.

It is now down to about 18,000 as a result of attrition and as a result of the tremendous increase in imports and the uncertainty in the market place. But as far as productivity is concerned, I would judge from my own personal observations that its productivity is somewhat higher in the United States, and that the worker force both here and abroad is essentially a semiskilled workforce.

The number of separate companies is huge and unique. To me it is the only example of Adam Smith's free trade concept. I know of no other industry where that occurs.

Mr. PEASE. And do you say for the average garment labor component is about one-third?

Mr. STAROBIN. In the United States.

Mr. PEASE. In the United States, so if you had a garment selling a wholesale for about $10, the wage component would be about $3.35?

Mr. STAROBIN. Roughly, yes.

Mr. PEASE. And if the wage level in a Third World country is 10 times as much as it is here, then the wage cost in that country, the wage component might be 35 cents, so you have to essentially overcome a $3 differential in labor costs; right?

Mr. STAROBIN. Exactly so.

Mr. PEASE. And I guess the reality probably would be that transportation costs and tariffs would not be enough to make up that differential?

Mr. STAROBIN. Not at all. If they were, Mr. Pease, we would have fewer imports and more domestic production.

We would have increases in domestic production because even under the best of circumstances imports create an enormous uncertainty in terms of runs and time and delays and so forth.

It is a fact that importers, who are mainly retailers, now buy directly. They include Sears and Macys, and so forth, which have their operations in Hong Kong or someplace in Asia, and they buy for their entire chain. Their interest, obviously, is in maximizing their profits. And they maximize their profits because of the low wage levels.

Our alternative is to sink to their levels and then we no longer have the United States of America.

Mr. PEASE. I appreciate your answers. They have been helpful to me in understanding the economics of this industry.

Mr. STAROBIN. Thank you, sir.

Mr. PEASE. Again, on behalf of the chairman I would like to thank all of our witnesses.

And this will conclude our hearings on H.R. 3, and proposals for comprehensive trade legislation.

Those wishing to submit statements for the written record of these hearings have until the close of business a week from today, Friday March 6, to do so.

This will conclude the hearing.

[Whereupon, at 1:50 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

SUBMISSION OF THE AD HOC COMMITTEE OF DOMESTIC NITROGEN PRODUCERS AND THE INDEPENDENT REFINERS COALITION ON PROPOSED TRADE LAW REFORMS: NATURAL RESOURCE SUBSIDIES, STATE TRADING AND NON-MARKET ECONOMY DUMPING

PROVIDED FOR
THE WAYS AND MEANS COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

March 3, 1987

INTRODUCTION

A key principle of the General Agreement on Tariffs and Trade (GATT) is that market forces should determine both the cost of production and the selling price of products in world trade. The alternative to this market principle is a less-efficient, protectionist global economy dominated by government-subsidized production and trade.

In many nations, both industrialized and developing, we have witnessed the growth of state enterprises and increased government control of key industrial sectors. Government ownership and control of industries is not inherently unfair. At the same time, however, governments should not use sovereign power to bestow unfair advantages on their own producers. When government regulation of market forces acts to distort resource allocation, create excess industrial capacity and provide artificial incentives to export, the result is trade distortion that unfairly injures other world producers. GATT Article XVII explicitly states that governments must "act in accord with commercial considerations" when engaging in world commerce.

Government intervention in the development and control of industries, and in the pricing of production inputs--particularly capital and materials--has distorted trade in both capital and resource-intensive products. The problem is particularly acute in commodity ("fungible product") trade. Commodities are mass-produced items, undifferentiated in quality, which compete in world markets on the basis of price. Undue government intervention into capital and resource-intensive commodity industries has served to create excess capacity and overproduction, depress market prices and injure unsubsidized producers in the United States and other market-based economies.

Governments are providing very low cost loans to build new production facilities, even in industries already characterized by global excess capacity and depressed prices, which commercial lenders would not support. To develop and maintain the operation of uneconomic industries, governments must continue to provide capital and materials at below-market prices or absorb losses into state treasuries. Market-based producers cannot be expected to compete long-term against such intervention and subsidization.

Governments also control key material inputs to production. Today, nearly 90 percent of the world's oil and natural gas reserves are owned by governments. This ownership has preceded the expansion of state enterprises to include the downstream industries which intensively use resources to make commodity products. For example, governments now own or control almost 70 percent of world ammonia fertilizer production and over 70 percent of urea fertilizer production. Governments control some two-thirds of world phosphate production. Governments now control the vast majority of petroleum refining capacity. Control over other basic petrochemicals and other energy-intensive products, such as cement, is expanding rapidly while private sector development is slowing or has already stalled.

The Resource Input Subsidy amendment in H.R. 3, the State Trading amendment in S. 490, and the "Special Rule on Fungible Products" in S. 490 and S. 307 are designed to uphold the market pricing principle. The House Ways and Means Committee should strongly support amendments to H.R. 3 which 1) include State Trading on terms inconsistent with commercial considerations as an unjustifiable trade practice, and 2) include the "Special Rule" in order to improve the NME dumping law with regard to commodities.

SUPPORT THE RESOURCE INPUT SUBSIDY PROVISION IN H.R. 3

The Resource Input Subsidy provision in H.R. 3 deserves your continued support. The justification is simple: U.S. industries should not be forced to compete against foreign exporters whose production costs are subsidized by governments. Natural resource subsidies have become a problem for U.S. industries as competition with government-owned and controlled industries has increased.

In the United States, market forces now largely determine the price of natural resources such as crude oil and natural gas, and these resources are owned and utilized by private enterprise. In many nations, however, governments own all natural resources, set resource prices, and control the industries which use resources to make products. Differences between private and state resource ownership and control have erupted into serious trade disputes and have unfairly injured efficient U.S. industries.

The problem arises in its simplest form when a government provides a natural resource like oil or natural gas to its resource-intensive industries--such as fertilizer, refined petroleum products, petrochemicals, etc.--at less than fair market value to make those products, while charging higher market prices for the same resource when it is exported. There are several variations of this practice, all of which produce the same effect and result. This discriminatory practice serves to 1) maintain higher prices for natural resources in world markets; 2) protect a government's domestic industries from import competition; and 3) provide the government's industries with an insurmountable production cost advantage when exporting resource-intensive products into market-based economies.

In international trade, the effect of this practice is the same as a direct cash subsidy to lower the price of energy inputs in relation to those paid by unsubsidized producers. U.S. producers of fertilizers, commodity petrochemicals, refined petroleum products, carbon black, cement and primary metals have been injured by this unfair practice. Injury occurs as subsidized imports undercut U.S. producer prices to gain U.S. market share. In many cases, subsidized imports have been sold at prices below the U.S. industry's cost of production. This is particularly damaging in U.S. commodity markets, where the lowest price sets the market price and where oversupply also acts to lower prices. While the subsidized producers can withstand low prices, private producers must recover their costs or drop out of the market.

Existing U.S. trade law and interpretation have failed to resolve these disputes. In response, the Resource Input Subsidy provision will provide a remedy to U.S. industries injured by unfair, government-subsidized imports. The provision's purpose is to ensure that competition in the U.S. market is based on efficiency -- not on preferential and discriminatory natural resource pricing by a few governments.

The House of Representatives has overwhelmingly approved this legislation twice. In 1984, a move to strike the provision from the Omnibus Trade Bill was defeated in a 259-95 vote, but the provision was finally blocked in conference by a 4-3 Senate party-line vote. In 1986, a move to strike the provision from H.R. 4800 was defeated by 338-79, as a clear majority of Republicans as well as Democrats voted to keep the provision.

Administration opposition prevented the bill from coming to a vote in the Senate in 1984 and 1986. The Administration has acknowledged that natural resource subsidies are a major problem for American industries, but has opposed the legislation without offering an alternative. The Administration has agreed to discuss trade in energy-intensive products during the GATT round. However, virtually none of the other GATT signatories are willing to address this issue, and many of the countries which use these practices are not GATT members. In any event, a new GATT accord is probably eight to ten years away. In the interim, Congress must act to prevent continuing injury to U.S. companies and workers.

In order for a countervailing duty to be applied under the provision, the following conditions must exist.

1) a government must provide a natural resource to a resource-intensive industry at less than fair market value;
2) the low resource price must be discriminatory, i.e. denied to other willing buyers by reason of government regulation;
3) the resource must constitute a significant portion of an import's production cost;
4) the import must be shown to be a cause of injury to U.S. producers.

If all these conditions are proven to exist, the countervailing duty applied would be equal to the difference between the resource input's fair market value and its artificial government-set price. Fair market value is the price a willing buyer would pay a willing seller in an arm's length transaction absent government intervention. Domestic producers must operate under this standard and should not be expected to compete with state enterprises which do not.

This provision is consistent with the GATT, which says that governments may subsidize domestic development within their economies, but must avoid the adverse effects of those subsidies if the export of the subsidized product "adversely affects the conditions of normal competition" and causes injury to producers in other nations. The provision simply offsets the amount of the subsidy.

The provision is also consistent with the most recent decision of the Court of International Trade in the carbon black case. That case stands for the proposition that each CVD case must be examined on its facts in determining whether a countervailable benefit has accrued to a specific industry or group or groups of industries. According to CIT and the GATT Subsidies Code, Commerce is required to look at the effects of domestic subsidies on specific industries rather than continuing to employ a rigid, mathematical formula which denies relief to U.S. industries if a benefit, regardless of its actual effect, is available to more than one industry.

The Department of Commerce has misapplied its so-called "specificity test," which says that for a subsidy to be countervailable it must distort the allocation of resources within an economy. Under Commerce's rigid misapplication of this test, where a subsidy is broadly available in an economy there can be no distortion of resource allocation; this is simply not true in every case. Certain "broadly available" subsidies can act to directly lower the cost of production of one or a few industries, while having little effect on all other industries in an economy. Subsidies which have the effect of conferring significant benefits on certain industries can be differentiated from general government programs such as police and fire protection, roadbuilding, health care and other programs which actually and directly provide broad benefits. "Broadly available" subsidies which have the effect of providing direct and significant benefit to one or a few industries, while providing only nominal benefit to all others, should be countervailed.

The problem does not lay so much in the so-called "specificity test" itself, but in the manner by which Commerce has continued to narrow and misconstrue its application. The GATT Subsidies Code, the Court of International Trade and the "rule of reason" argue for an "effects test" applied on a case-by-case basis. Otherwise, confusion continues to multiply. Under Commerce's misapplication, all regional and sectoral subsidies are "a cause" of injury and countervailable even if they cause virtually no adverse effects. The GATT Subsidies Code clearly does not require this result.Conversely, subsidies which are more broadly available, but which act to directly and significantly lower the production input costs of a few industries, are not countervailable even if they are distortive and injurious.

Commerce has recently shown some willingness to move away from its rigid, irrational application of "specificity" but the problem is by no means solved. Congress must act to clarify how the countervailing duty laws are to be interpreted and applied--to ensure reason and consistency.

The Resource Input Subsidy provision does not automatically impose duties on any import. Under the provision, cases are tried on a country-by- country, case-by-case basis. The provision does not negate any government's right to pursue its domestic development objectives or to price its resources for domestic consumption at whatever price it decides. In addition, the provision does not deny the operation of real comparative advantage or set resource prices at U.S. price levels. The provision only gives U.S. industries their "day in court" to prove or disprove the existence of these subsidies.

Importantly, the need for this legislation has not been diminished by the recent preliminary Commerce finding of huge dumping margins against urea from the Soviet Union, Romania and East Germany and the ITC's preliminary 5-0 injury determination. The urea dumping cases pertain only to non-market economies and do not resolve the natural resource input subsidy problem because the Commerce Department has ruled that the CVD laws do not apply to non-market economies.

SUPPORT THE STATE TRADING AMENDMENT IN S. 490

The Senate trade bill, S. 490, contains a provision on State Trading enterprises which is crucial to U.S. competitiveness and fair trade. A similar bill was introduced in the 99th Congress by Senators Lloyd Bentsen and John Danforth as S. 2660. Section 305(e) of S. 490 acts to incorporates GATT Article XVII on State Trading into U.S. trade law and provides a Section 301 remedy. The purpose of S. 490 and GATT Article XVII is to establish that government instrumentalities and state enterprises must "act in accord with commercial considerations" when engaging in world trade. Administration witnesses supported inclusion of this provision in Section 301 in recent testimony before the Senate Finance Committee.

U.S. industries ranging from high technology to basic industries face increasing government-controlled competition from every world region. The U.S. is virtually alone in having resisted nationalization of failing industries and the creation of state enterprises. U.S. industries should not bear the burden of non-commercial actions by governments which maintain employment, establish or save unprofitable industries, protect their economies from imports and provide artificial incentives to export. By protecting state enterprise sectors from competition, governments can create "sanctuary pricing" at home--keeping prices artificially high or low--and export their surpluses at very low prices which may not even recover marginal production costs based on commercial terms.

The term "commercial considerations" essentially means that investment, production and pricing decisions should be determined by market forces of supply and demand. U.S. investors and producers succeed or fail by this standard. In contrast, non-commercial state enterprises depend on continuing government assistance to ensure their ongoing operations. Rather than being allowed to fail, a non-commercial state enterprise may be kept operating by continuing infusions of subsidized capital and materials, or its operating losses may simply be absorbed by the government treasury. In short, state enterprises are guaranteed their existence in perpetuity. They are not required to earn profits in order to replace their capital and continue their existence.

Commercial considerations should be judged on the basis of arm's-length purchases of capital and other production inputs, and sales of production outputs, priced by market forces. Under S. 490, insufficient evidence of arm's-length commercial purchases or sales by a state trading enterprise could result in applying the constructed value method used in dumping cases. There is a potential deficiency in this approach which can be easily remedied. In dumping cases, constructed value is a method of calculating production costs of the exporting producer. If the exporter is a state enterprise receiving state aids of one type or another, the production costs on its books may not be consistent with commercial terms and considerations. In this event, the standard should require that a state enterprise's "factors of production"--its actual inputs of capital, materials and labor--be valued using prices set by commercial terms and considerations in market economies, or market price benchmarks.

Non-commercial state trading has created new excess capacity in world commodity industries and has served to maintain enterprises which, without subsidies and other state assistance, would fail. Certain government-supported producers of fertilizers, refined petroleum products, petrochemicals, steel, and agricultural products may never recover their fully allocated costs of production or provide a return on investment, yet they continue to export to world markets. Excess supply continues to depress U.S. and world prices for these commodities, injuring U.S. producers. U.S. companies and workers should not be forced to compete against foreign industries which are supported by their governments at U.S. producers' expense.

SUPPORT THE "SPECIAL RULE ON FUNGIBLE PRODUCTS" IN S. 307 AND S. 490 TO IMPROVE THE NON-MARKET ECONOMY DUMPING LAW

There are serious problems with the treatment of imports of "fungible" or commodity products from non-market economy (NME) nations under the NME dumping laws. The "Special Rule on Fungible Products" in S. 307 and S. 490 is specifically designed to make the NME dumping laws more consistent and fair specifically in regard to NME commodity imports. The "Special Rule" is essential because the impact of low-priced NME commodity imports on U.S. commodity producers and markets can result in significant distortion of the market pricing function and unfair injury to U.S. producers. We urge you to support the Special Rule.

Commodities are products which are produced and sold in large volumes at low profit margins per unit. Commodities are largely undifferentiated in quality and compete primarily on the basis of price. In U.S. commodity markets, the lowest selling price sets the market price, because all producers must meet the lowest price offered to maintain sales. Commodity prices are determined by oversupply or undersupply relative to demand. If NME commodity producers desire to increase their U.S. market share by price undercutting or by simply oversupplying the market -which will in and of itself depress prices- U.S. and other market producers can be seriously injured.

Dumping cases involving NME commodities present special problems by comparison to dumping cases against market economy producers. Dumping margins involving market producers may be determined by comparing the producer's home market price against the producer's U.S. selling price. If those prices are inappropriate, the export price to the U.S. can be compared to the exporting producer's cost of production, including overhead and profit. In NME cases, however, Commerce cannot determine dumping by using NME home market prices or production costs because NME input and output prices are artificial. Export prices of commodities to third countries may reflect the same underselling that is occurring in the U.S. market in either type of case.

Historically, Commerce has preferred to compare NME import prices with either the home market prices, the cost of production of a "cooperative surrogate producer" in a comparable market economy, or the surrogate producer's selling price to a third country. Too often, this method results in a futile search for a "cooperative" surrogate producer or the use of one not located in a comparable economy, bestowing a "crap shoot" quality on final determinations and creating uncertainty for both U.S. and NME producers involved in the case.

Under current law, however, Commerce does have a rational test to determine the fair value of NME commodity imports. Commerce may use the "factors of production" approach, by which the NME's actual production inputs ("factors") of capital, materials and labor are valued using publically available prices from a comparable market economy. The most appropriate surrogate economy can be selected early in the case and retained throughout the case, barring unusual circumstances. This improves both certainty and result. This method eliminates the confusion and unpredictability of trying to locate a "cooperative" surrogate producer in a market economy. Commerce seldom uses the "factors" methodology because it has issued regulations requiring that the other methods be tried first. Under S. 307 and S. 490, Commerce would be directed to apply the "factors" method to all NME dumping cases involving commodities. This approach is sometimes referred to as "simulated constructed value."

Under considerable urging Commerce has applied the "factors" method to the current NME urea dumping cases. Commerce investigated all four methods available and determined that the other three were unacceptable to determine sales at less than fair value in this commodity case. Commerce priced the NME factors of production by using the prices of production inputs in a comparable market economy. By using factors and publically available prices, Commerce should be able to use their "first choice" for a comparable market economy throughout the investigation.

Commerce's preliminary determination found significant dumping margins against the NME producers. The "factors" method revealed that the NME urea producers are not more efficient in terms of capital, materials and labor, but have been selling urea in the U.S. market at prices significantly below their own cost of production based on the material, capital and labor costs of comparable market economies. The primary advantage of using the factors method is that it recognizes the NME's actual production efficiencies but values them against verifiable market prices.

The fact that the European Community, Canada and Australia have also instituted urea dumping cases against the same NME urea producers and others indicates the widespread price depressing effect of underselling and oversupplying commodity markets. It also illustrates why export prices, or import prices, are inappropriate benchmarks in commodity dumping cases.

The Administration's NME Benchmark Price Proposal Will Not Provide A Remedy Against NME Commodity Dumping

The Administration proposes that all NME import prices should be compared against a "benchmark" price equal to the lowest import price of the largest market economy supplier. This would be disasterous in cases involving NME commodities. It would act to guarantee by law that the NME producer can sell at the lowest price in the U.S. market with no proof that the NME producer is in reality the low-cost producer. No other nation or producer gets such a guarantee by law. Because all commodity producers --foreign and domestic--competing in the U.S. market must meet the lowest price, the NME producer could sell at dumped prices which would have to be met by all other importers. The Administration's proposal would end up comparing depressed prices against depressed prices and would provide no relief from injury for U.S. producers. It creates a "safe harbor" for NME producers.

S. 307 and S. 490 also establish a benchmark price, based on the "average import price." However, they resolve the "safe harbor" problem for commodities by adding the "Special Rule on Fungible Products."

Amendments to Section 406 in H.R. 3 Do Not Specifically Address NME Commodity Dumping

Section 406 remedies are based solely on a determination by the International Trade Commission that NME imports are a significant cause, or threat thereof, of material injury to a U.S. industry. In addition, the President has unlimited authority to reject any recommendation of the ITC. In effect, the issue in Section 406 cases is reduced to a subjective judgement of the degree to which NME imports are a "significant" cause of injury, and a political decision to act or not to act based primarily on foreign policy considerations. U.S. industries risk becoming pawns in power politics by filing such cases.

The amendments to Section 406 in H.R. 3 are an improvement, but are not definitive. Furthermore, they do not correct the deficiencies in the NME dumping laws.

Importantly, both the Administration and Congress have proposed that suspension of NME dumping cases based on quantitative restrictions should be incorporated into the trade law. Neither Section 406 nor the NME dumping law should be an exclusive remedy for NME trade disputes. The unfair trade practice provisions of the dumping laws should be modified and retained. The "Special Rule" must be part of that modification. Coverage of NMEs under the CVD laws, at least with regard to export subsidies, should be restored.

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Aerospace Industries Association of America, Inc.

March 6, 1987

Mr. Joseph K. Dowley
Chief Counsel, Committee on Ways and Means
U.S. House of Representatives
Room 1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Dowley:

In the Subcommittee on Trade hearing announcement of January 28, 1987, you requested comment on the basic factors influencing the United States trade situation including measures to improve the efficiency and effectiveness of U.S. Customs Service operations and enforcement. This letter will be in response to this invitation and will address issues dealing with the U.S. Customs.

For the record, I should like to state that the aerospace industry is one of the foremost industries in U.S. export-import volume. In 1986 exports averaged 18.2% of total aerospace sales of $103.5 billion and more than 9% of all U.S. exports. These figures underscore the importance to the U.S. economy of high-value, high technology aerospace trade. Given this level of international trade we are sensitive to the requirements for proper enforcement controls. We have found, however, one major impediment to proper enforcement, and perhaps enhanced trade, is the absence of electronic data interchange and timely interface between industry and agencies of government who exercise jurisdiction over these activities, and a tendency to develop procedures involving multiple sectors of government without full consideration of the impact on industry operations.

As you are aware, regulations issued by the Department of State Office of Munitions Controls relating to export licensing procedure and controls are enforced by Customs. As there is no requirement under the Administrative Procedures Act for public comment on changes to these regulations and

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procedures, the implementing Customs directives are issued to the various districts from headquarters absent comment from industry. While the directives can be obtained from Customs in accordance with the Freedom of Information Act, the delay in industry receiving timely information often results in some failure on the part of the exporter/importer to adhere to correct procedures. The latitude granted or sometimes taken by the Customs districts in interpreting the directives covering the OMC regulations can result in inconsistent treatment of trade documentation at different ports, delays in the proper flow of merchandise and unwarranted penalties. Where a contradiction results between jurisdictions, the exporter/importer is placed in the untenable position of having to violate a regulation to abide by an agency policy directive.

Of equal concern to industry are operations involved with the importation of duty free defense materials. The Defense Logistics Agency, with reponsibility for screening such imports, must interface with Customs and the defense contractor. However, experience has shown that some Customs procedures and requirements for documentation that are appropriate for commercial interests are impractical for defense material imports. Documents required for duty free entitlements are under the best scenario difficult to obtain within Customs' required time period. The import thus becomes subject to possible duty assessment. The loss of duty free status on these materials, even though included in a Department of Defense contract, can result in failure to accrue savings to the military appropriations. Where duty paid is recovered at some later date under existing regulations there remains for both government and industry the expense of time and use of personnel to process the necessary claim. While procedural changes invoked by agencies of government to implement regulations are not always subject to notice and public hearing, such communications are not illegal and could serve to overcome future problems of compliance and eliminate unnecessary government expense and misallocation of the existing work force.

While the Congress has rightfully determined that all export-import activity should not be controlled by one sector of government, there remains the need for a proper and modern interface between the involved agencies and regulated industry. This can be of particular importance to the aerospace sector of business when procurement funds and high technology trade are at issue.

We appreciate the opportunity to present our views, and ask that you contact us if you feel we can be of further assistance. We also ask that our statement be made part of the official hearing record.

Respectfully,

Jos. Dauksys

Joseph Dauksys
Director, Traffic Service

STATEMENT SUBMITTED ON BEHALF OF THE TEXTILE AND APPAREL GROUP OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS BEFORE THE TRADE SUBCOMMITTEE OF THE HOUSE WAYS & MEANS COMMITTEE

This statement is submitted on behalf of the Textile and Apparel Group of the American Association of Exporters and Importers (AAEI-TAG). TAG has 109 members, the majority of whom import textile and apparel articles. (A TAG membership list is attached as Appendix I). TAG wishes to express its views concerning the following five issues raised in H.R. 3 and by Committee members that directly affect textile and apparel imports: 1) sector-specific textile and apparel import restraint provisions; 2) further restrictions on textile and apparel imports through modifications in the administration of agreements and call and consultation procedures; 3) mandatory import licensing and/or auctioning of textile and apparel import quota licenses; 4) changes in laws governing trade remedies with respect to non-market economy countries; and 5) restrictions on the President's tariff proclamation authority with respect to textile and apparel articles.

I. Omnibus Trade Legislation Should Be Kept Free of Sector-Specific Legislation Restraining Textile and Apparel Imports

H.R. 3 is intended to enhance the competitiveness of American industry. TAG believes that if members respond to pressures to add provisions imposing sector-specific import restraints on textile and apparel imports, H.R. 3 would be transformed into a highly protectionist measure which would undermine rather than promote the competitiveness of American industry.

A. Additional Protection Is Unnecessary Because the Domestic Textile and Apparel Industry is Highly Competitive and Outperforming the Rest of the Economy.

The domestic textile and apparel industry cannot make the case that existing quotas need to be tightened especially when it is highly modernized, efficient and outperforming the rest of the economy. According to Dewey L. Trogdon, President of the American Textile Manufacturers Institute in a letter to the Editor of the Washington Post on September 24 of last year:

> The United States is the unchallenged world leader in textile manufacturing productivity and efficiency. A study by Werner Associates, a New York management consultant, found that even the innovative Japanese were only 74 percent as productive as American manufacturers.
>
> Over 80 percent of the industry's retained earnings are devoted to capital investment. For 13 of the last 14 years, the industry has spent more than $1 billion on new equipment

and an average of $1.6 billion each year for the last 10 years. . .

The bottom line is a capital productivity increase of 51 percent in the textile industry in five years. Five years ago, the typical loom produced fabric with 25 flaws in every 100 linear yards, while today there are 5 to 8 per 100 linear yards.

This modernization has paid off. Profits in the industry doubled between 1985 and 1986, capacity utilization in textile mill production was over 95 percent in November of last year, and shipments are up. Kurt Salmon Associates, Inc. recently predicted a 20 percent increase in industry profits this year and a 2 percent increase in shipments. Wages in both the textile and apparel industries have increased over the last year and employment overall is stable. Clearly all economic indicators agree with the President of ATMI that the industry is restructuring and is increasingly competitive. (Detailed industry data is provided in Appendix II).

Consumers already pay $27 billion for existing textile and apparel quotas according to a 1986 study released by the Institute for International Economics. It is simply not fair to ask consumers to pay even more when the industry is so highly competitive and profitable and it is so clear that additional protection is not warranted.

B. The Textile and Apparel Industry is Currently One of the Most Highly Protected Industries in the U.S. Additional Protection is Unwarranted.

Even though the textile and apparel industries are highly competitive, they are among the most highly protected industries in the U.S. Additional import restraints are totally unwarranted. Tariff rates on textiles and apparel average 18.5 percent, almost fives times the rate of approximately 3.8 percent for all other dutiable products. Unlike most other products, textiles and apparel are excluded from major trade preference programs. Also, the United States is a party to 38 bilateral textile agreements and the Multifiber Arrangement (MFA), the multilateral agreement governing international textiles trade. Pursuant to these agreements, the United States maintains over 1300 quotas of various types. These include 117 new quotas established during the past year alone.

Moreover, since the introduction of the Textile and Apparel Trade Enforcement Act of 1985, the Administration has significantly tightened the regulation of textile and apparel imports under U.S. bilateral agreements and the MFA. Of major importance was the negotiation in July 1986 of an extension to the MFA which broadened the MFA's coverage to include products of silk blends, linen, ramie, jute and other previously unregulated fibers. This closed what the U.S. industry claimed was a major "loophole" in the MFA's coverage.

At the same time, the Reagan Administration successfully renegotiated U.S. textile agreements with Hong Kong, Korea, Taiwan and Japan to make them more restrictive. Products of silk blends, linen, ramie and other new MFA fibers were brought within the coverage of these agreements for the first time. New restraints also were established which limit overall growth of trade under these agreements to less than one percent per year. New agreements with Pakistan and India were negotiated establishing aggregate limits restraining all textile and apparel imports from these important textile exporting countries. The U.S.-China Textile Agreement expires at the end of 1987 and a broader and more restrictive new Agreement is expected to be negotiated as well.

C. Sector-Specific Textiles and Apparel Legislaton Would Undermine U.S. Efforts To Improve the U.S. Trade Position Overall

Including additional protection for textiles and apparel in a generic trade bill would inevitably generate pressures from numerous other industries for similar new protection. The result would be an unworkable Christmas tree bill with conflicting goals and highly divisive elements.

Internationally, textiles and apparel legislation would impede rather than promote U.S. competitiveness by weakening the economies and limiting the foreign exchange earnings of the developing countries which are a major potential market for U.S. agricultural and industrial exports. Textiles and apparel legislation would also seriously diminish the prospects for an international agreement on trade liberalization in the Uruguay round of GATT trade negotiations and undermine the pledge made by participants not to take any trade restrictive measures inconsistent with the GATT or which go beyond that necessary to remedy specific trade problems. A breakdown of negotiations would be inevitable in an atmosphere poisoned in this fashion.

II. PROBLEMS WITH PROPOSALS TO REFORM ADMINISTRATION OF TEXTILE AGREEMENTS AND CALL AND CONSULTATION PROCEDURES

AAEI-TAG believes any legislative proposal to establish standards for actions to restrain textile and apparel imports through the use of consultation call mechanisms, either through regulation or by defining market disruption by an arbitrary level of import growth, is likely to be a violation of U.S. obligations under the MFA and U.S. bilateral textile agreements. Furthermore, such proposals are likely to aggravate the present situation under which restraints are triggered when there is no disruption of the U.S. market.

A. AAEI-TAG Strongly Opposes The Use Of An Import Growth Standard to Determine Whether Actions to Restrain Particular Textile and Apparel Imports are Warranted.

Under the current system, consultations on an extraordinary number of such calls are undertaken each year. During 1986 alone there were 117 such calls.

Under the MFA, actions to restrain imports can be taken only to eliminate actual or threatened market disruption. As defined in Annex A of the MFA, market disruption means serious damage to domestic producers of competitive products or the actual threat of serious damage -- an injury test comparable to the test for serious injury under the escape clause. The MFA and paragraph 6 of the conclusions of the recently negotiated Protocol Extending the MFA (attached as Appendix III) specifically require that a finding of serious damage or threat to domestic producers be based upon an examination of factors such as production, employment, profitability and capacity utilization as well as import trends.

Unfortunately, the Government lacks the data necessary to evaluate the economic condition of U.S. producers of competing products to determine whether they are suffering or threatened with injury. This was detailed in a November 1983 U.S. General Accounting Office Study requested by the Chairman of the Ways and Means Trade Subcommittee entitled Implementation of Trade Restrictions for Textiles and Apparel which concluded that:

> CITA's data collection procedures do not provide the current detailed data that would better support findings of market disruption. Production data are dated, employment data are not compatible with the textile and apparel categories that are the subjects of consultation requests, and assertions in the disruption statements are vague concerning the current state of the market for the category in question . . .
>
> Although data on imports are only 2 to 3 months old at the time a request is made, production data generally range from between 10 to 24 months old. Consequently ... if production has increased from the time the data were collected, CITA may be making a request unnecessarily, to the detriment of importers and retailers. (P. 19).

The Government's capabilities in this area have not improved since the GAO's report. Currently, decisions to request consultations to restrain apparel imports are based upon 1985 production data. Employment data remains incompatible with import data. Domestic pricing data used in comparison with import unit value is not systematically collected and does not take into account differences in product mix, quality or level of trade.

Moreover, an examination of recent calls shows that the Government continues to rely on import growth as a basis for its calls irrespective of the U.S. market conditions. A glaring example is calls last August on ramie sweaters from China and Macau. Although imports of sweaters from these sources had grown, there is no basis to suggest that domestic producers have been injured by these imports. On the contrary, the domestic sweater industry has grown along with the growth of imports, particularly in the area of cotton sweater production most competitive with the ramie cotton blend sweaters which represent the bulk of ramie sweater imports from China and Macau (See Tables attached as Appendix IV). When AAEI-TAG questioned the Committee for the Implementation of Textile Agreements' (CITA) rationale for issuing these calls in light of the health of the domestic sweater industry, CITA justified its actions based on the overall growth of sweater imports and the fact that domestic sweater production was below 1972 production levels. (See AAEI-TAG and CITA correspondence attached at Appendix V).

As can be seen from the recent U.S. calls on ramie sweaters, import growth alone is not necessarily indicative of market disruption. The growth of imports in a particular product is often driven by changing consumer tastes and increased consumer demand which generates increased domestic production as well. Thus, the arbitrary use of an import growth standard would result in unnecessary restraint.

The problem of the current reliance on import trends as virtually the sole basis for determining which industry segments actually are suffering or are threatened with injury can be ameliorated by more efficient collection of domestic industry data and improved analysis. AAEI-TAG recommends that as part of the current effort at trade reform, the Executive branch should retain the authority to make the ultimate determination of market disruption, but data collection and analysis should be transferred by Executive Order to the U.S. International Trade Commission (ITC). The ITC already collects domestic industry data and undertakes comparable industry analyses in antidumping, countervailing duty, escape clause and section 337 cases as well as analyses requested by the Trade Policy Staff Committee for reviews under the Generalized System of Preferences and by Congress under Section 332 of the Trade Act of 1930. The ITC is in the best position to collect and analyze data on the domestic industry in a timely and efficient manner.

B. Consultation Call Procedures Should Allow for Greater Transparency and Due Process

Section 703 of H.R. 3 requires that the Secretary of Commerce institute procedures to expedite the interagency process for consultation calls and negotiations. AAEI-TAG believes that the problem with the current system is not the timeliness of such actions, but instead is the lack of established procedures in conformity with other areas of our trade laws to ensure transparency and due process in decision making.

Under all U.S. bilateral textile agreements, the consultation call mechanism includes a provision automatically establishing a restraint level on the called product from the date of the consultation call, based on prior trade data. Thus the request for consultation is in fact a restraint action. However, unlike every other area of U.S. trade regulations, no prior notice is provided that such an action is contemplated and no opportunity is provided to comment until after the action is taken and the restraint level established.

In order to rectify this situation and ensure that some measure of due process be afforded in the decision making process, AAEI-TAG recommends that advance public notice be given of contemplated consultation calls, including the reasons justifying the potential imposition of a restraint, and that the public be afforded an opportunity to comment.

III. PROBLEMS ASSOCIATED WITH THE IMPLEMENTATION OF IMPORT LICENSING AND QUOTA AUCTIONING WITH RESPECT TO TEXTILE AND APPAREL IMPORTS

Although there are no provisions currently in H.R. 3 which would require mandatory import licensing and allocation of quota licenses by auction with respect to textile and apparel imports, TAG understands that such proposals may be offered as a means to raise revenue for adjustment assistance programs, to reduce the deficit and to further restrict imports. TAG believes that the costs of such proposals far outweigh any benefits.

A. Import Licensing May Be Used As a Means to Further Restrict Textile and Apparel Imports

Proponents of import lcensing of textile and apparel imports argue that such licensing will benefit importers by increasing predictability, resulting in more accurate import statistics and improve customs enforcement. In reality, it would cause major disruptions in trade, impose in effect a double system of textile and apparel quotas, and create a major new U.S. non-tariff barrier.

Import licensing would be impossible to administer due to the sheer volume of textile and apparel articles entering the U.S. each year, without significant increases in Customs and Commerce Department personnel. Textile and apparel articles account for half of the 6 million shipments that Customs processes annually, which means roughly an average of 250,000 textile entries per month. Additionally, there are well over 100 textile categories for restraint purposes and over 3,400 separate textile and apparel product classifications in the U.S. Tariff Schedules under these categories. It is also important to note that textile and apparel articles are imported from over 100 countries.

A similar administrative burden would be placed on the Department of Commerce which would be charged with the responsibility of allocating quota licenses. This task would involve massive amounts of resources and personnel which currently are simply not available. Attempts to raise revenues to cover the cost of necessary additional resources through an import license fee would raise additional problems. It is doubtful that a license fee which was set at a level which would be deemed reasonable and not construed as a surcharge, would raise sufficient revenue to cover the costs of a licensing scheme. There are also a host of mechanical problems that could arise in connection with the administration of an import licensing scheme such as monopolisation and speculation that would occur as a result of the difficulties in fairly regulating eligibility, allocation and transferability.

In addition to the impracability of a textile and apparel import licensing scheme the establishment of such a system in the U.S. would not transfer greater control of textile quotas to the U.S. Instead it would create a double system of quota controls. Under the Multi-Fiber Arrangement textile quotas are imposed on a country-by-country, bilateral basis rather than a global basis. Countries subject to such bilateral restraints need some method of allocating their textile exports which could not be accomplished through U.S. import licensing. Textile exporting countries would have every incentive to continue their textile export quota schemes and would not abdicate allocation to their exporters merely because the U.S. imposed a textile import licensing scheme. Moreover, as the United States bilateral textile agreements require the exporting country to establish an export control system based on the quota levels established in such agreements, textile exporting countries could not abandon their quota licensing schemes without violating their bilateral agreements with the U.S.

This double quota system will have a further trade restricting effect since aside from compounding the documentation requirements, it would be impossible to avoid situations in which even though an exporter or foreign manufacturer has been able to secure an export license or authorisation certificate, the U.S. importer is unable to secure an import license. In this situation importers would be faced with the dilemma of either losing an order or attempting to secure quota indirectly. The creation of double quotas would also violate Articles 5 and 9 of the recently extended MFA which prohibit the taking of measures which prevent full utilisation of quotas.

Finally, the potential for further restriction of textile imports through a complicated licensing scheme and possible license fees could create a major non-tariff trade barrier to trade in textile and apparel products. It would be counterproductive for the Congress to sanction the implementation of such a major new trade barrier at a time when the United States is urging its trading partners to lift trade barriers and initiate a new round of trade negotiations.

B. Quota Auctioning Would Compound The Problems Associated With Licensing of Textile and Apparel Imports

While import licenses may be allocated by a number of different methods, auctioning has been mentioned frequently due to its attractiveness as a source of revenue. Quota auctioning would merely compound the problems associated with licensing of textile imports due to the sheer volume of imports, the incredible diversity of imports, prices, market segments and systems of distribution.

Questions such as timing of auctions, methods of bidding, eligibility of bidders, transferability, ways to prevent speculation and profiteering must all be dealt with, and administrative decisions would inevitably favor one group of importers, retailers and consumers over others. It would be impossible to ensure that an auctioning scheme was administered in a way that did not disadvantage small importers, new entrants in the market, or suppliers of merchandise for low income consumers. It would also be impossible to ensure that such a system did not have a severe anti-competitive impact and lead to speculation and profiteering. These effects would be inevitable since to avoid complete disruption in trade any auctioning scheme would have to include some measure of historical import performance and allow for transferability of auctioned quota shares. Under the Australian scheme which has frequently been cited as a model for the U.S. to emulate, quota licenses are freely transferable and there is profiteering and speculation. The Australian Government has not come up with a way to eliminate these problems. Even with a system of straight auctioning and non-transferability these problems would inevitably occur as subterfuges for transferability would be invented by creative importers.

Auctioning would also lead to attempts by domestic manufacturers to gain control over imports in order to minimize import competition, and as a result problems of scarcity of supply and higher prices already in existence due to existing quotas would be exacerbated.

Quota windfalls or "rents" as economists refer to them, result from the artificial scarcity created by quota restrictions. While it may be desirable that the U.S. Treasury receive these windfalls, there is no assurance, particularly with respect to textiles and apparel, that auctioning of import quotas would prevent quota rents from remaining with the foreign producers. These profits would not be removed through auctioning of import licenses as the existing supplier country quotas would remain in effect. Minimum export prices or some other mechanism designed to capture a portion of the quota rent would also continue and proliferate. The end result would be continued profits to foreign producers and even higher costs to U.S. consumers. We understand that this was one of the major reasons the Administration opposed the provisions of the textile bill requiring auctioning of import licenses.

Auctioning would raise serious questions with respect to our international obligations under the GATT and under U.S. bilateral textile agreements and the MFA. The additional costs and administrative burdens imposed upon importers by an auction system and the business disruption arising from the virtually certain administrative breakdowns of such a complex system, would make access to the U.S. market considerably more difficult. The Administration has expressed its doubts that an auctioning scheme could be devised which would be consistent with our obligations under Articles II and VIII of the GATT which prohibit the imposition of any charges or taxes on imports which are more than an incidental user fee. Clearly, auctioning would be viewed by our trading partners as a non-tariff barrier.

IV. IMPACT OF CHANGES IN U.S. LAWS REGULATING IMPORTS FROM NON-MARKET ECONOMY COUNTRIES ON TEXTILE AND APPAREL IMPORTS

As a result of past cases filed against the People's Republic of China, TAG is concerned about the impact proposed changes to the NME import laws under section 406 of the Trade Act of 1974, and the antidumping laws will have on textile and apparel imports. TAG believes that in devising an effective NME import relief provision care should be taken to ensure that the standards applied to NME imports are fair and predictable.

H.R. 3 would make Section 406 of the Trade Act of 1974, the market disruption statute, the sole remedy with respect to NME imports. Under section 124 of H.R. 3, section 406 would be amended in order to make it easier for domestic industries to obtain relief from NME imports by lowering the causation standard and making it harder for the President to deny relief recommended by the International Trade Commission. In the Senate, S. 490 the Senate Omnibus Trade bill contains a provision which would regulate NME imports under U.S. antidumping law using an artificial benchmark for prices of NME imports based on a weighted average price of the largest free market exporter to the U.S. of a like product.

Both approaches raise serious questions of fairness and certainty. TAG is concerned on the one hand with any effort to amend section 406 in order to make relief automatic (by lowering the injury standards or removing the President's discretion) regardless of whether NME imports are injuring a domestic industry. On the other hand, the artificial benchmark approach is fundamentally flawed. The major problem with such an approach from the viewpoint of NME exporters and U.S. importers, is that it gives little improvement in terms of the arbitrariness of the benchmark. Since NMEs tend to be new entrants into the U.S. market, a methodology that relies upon average import prices (or largest free market producer's average price) generally would force the NME country to price at a level of well established market leaders. As a commercial matter this usually will prove difficult if not impossible for a new entrant into a market, since purchasers are not yet sure of the reliability of supply or the quality of product from the NME exporter. For these reasons TAG urges the Committee to carefully consider any provisions affecting NME imports and to avoid adopting any proposals which base relief on arbitrary standards.

V. NEW ROUND NEGOTIATING AUTHORITY SHOULD INCLUDE AUTHORITY TO PROCLAIM TARIFF REDUCTIONS ON TEXTILE AND APPAREL ARTICLES

Section 153 of H.R. 3 extends the Presidents' non-tariff negotiating authority but makes the authority to proclaim tariff reductions on items declared to be import sensitive under the GSP program subject to Congressional review under fast-track procedures. Textile and apparel articles are among those articles deemed to be import sensitive and the President would therefore not have the authority to proclaim tariff reductions on such articles absent Congressional approval.

TAG strongly opposes the restriction on the President's authority to proclaim tariff reductions. The restrictions on the President's negotiating authority will hinder his ability to participate meaningfully in New Round negotiations. In particular, the exclusion of authority to proclaim tariff reductions on textile and apparel articles will jeopardize efforts to use tariff reductions as leverage to gain greater access in developing country markets.

VI. CONCLUSION

TAG respectfully urges Committee members to: refrain from adding sectoral measures such as restraints on textile and apparel imports to H.R. 3; avoid adopting measures which seek to restrain textile and apparel imports through modifications in the current consultation and call procedures or through import licensing and quota auctioning; and to extend the President's authority to proclaim tariff reductions without prior Congressional approval.

APPENDIX I

**TAG MEMBERSHIP LIST - February 1987

CHILDRENS APPAREL

Baby Togs
Baby Fair
Renzo Co. Inc.
Shalom Childrens Wear
Victor B. Handal Inc.
Playknit/Steven Barry

MENS APPAREL

Enro Shirt Co.
Generation One Apparel
Irving B. Reder & Co. Inc.
Squire of California
Stage II Apparel Corp.

WOMENS APPAREL

Abe Schrader
Abvien Imports
Aparacor
Ciao Sport Ltd.
Esprit de Corp.
Jones Apparel Group
Laura Associates
Misty Valley Inc.
Morsly Inc.
Porterhouse Ltd.
RIG Knitwear
Marisa Christina
Miss O
Swell Wear
Segerman International
Trigere
Ashford Fashions
Ann Stevens Inc.
Betty Hanson
20th Century Wear

MENS and WOMENS APPAREL

Adventura Ltd./Shipton
Bernard Chaus Inc.
Frank L. Savage (sweaters)
Generra Sportswear Inc.
Hampco Apparel Inc.
Louis Barasch Inc.
Smart Shirts

** No breakdown is available on either the number of TAG members engaged solely in importing or of the total volume of textiles and apparel imports or exports by company.

TAG MEMBERSHIP LIST - February 1987 (continued)

The Gap Stores
U.S.A. Peninsula Inc.
Winer Sportswear Inc.
Rose Cloak & Suit
Fairhill Industries
Murjani

DEPARTMENT STORES

Alexanders
Allied
Associated Dry Goods (ADG)
Associated Merchandising Corp. (AMC)
Carter Hawley Hale
Dayton Hudson (Target Stores)
J.C. Penney
K Mart
May Dept. Stores
Mervyn's
Saks Fifth Avenue
Sears Roebuck & Co.

TEXTILES and Other MANUFACTURERS

Abacus - Textile & Machinery
Choril America - Textile, Chemicals, Machinery
Arbill - Industrial, Rainwear, Work Gloves
Fabil Mfg. - Apparel & Giftwear
Latex Glove Co. - Apparel, Rubber, Chemical, Metal
Lubman & Co. - Apparel, Giftware, People's Republic of China Specialist
Mast Industries - Apparel & General Merchandise
Sunrise Knitwear - Textiles & Apparel
Irving R. Boody - Textiles, Waxes & Fatty Acids
Frederick Atkins - Knitwear, Metalware & Decorative Items

HARDGOODS

Cost Plus Inc.
Fingerhut Corp.
Hiraoka New York Inc.
Newman Importing Co. Inc.
Variety Stores
Performance Trading
Sanroy Corp.
Scope Imports

TEXTILES

American Kynol
Jackson Fabric Associates
R.L. Pritchard Co.

TAG MEMBERSHIP LIST - February 1987 (continued)

Sigmatex
Nortex International Inc.
East Bay Textiles Inc.
HMS International Fabric Corp.
Supreme International

ATTORNEYS

Morgan, Lewis and Bockus
Mudge Rose Guthrie Alexander & Ferdon
Willkie, Farr & Gallagher

ASSOCIATIONS

American Fair Trade Council

BROKERS

Arthur J. Fritz
Gladish & Associates
Carmichael International
M.G. Maher & Company
Wolf D. Barth Company
Bostrum Warren

MISCELLANEOUS

U.S. Lines - Steamship Carrier
Bag Bazaar - Handbags
S. Betesh & Co. - Handbags & Accessories
York Luggage - Luggage
E.S. Luther Inc. - Represents Importers & Manufacturers
Nelson Recreation Products - Sporting Equipment & Textiles
Nissho - Iwai American Corp. - Machinery, Metals, Chemicals, Textiles
Spiegel - Mailorder
Plastic Safety Products - Safety Products
Jacob Ash - Gloves & Rainwear
Magid Gloves - Gloves
Totes Inc. - Rainwear

NOT LISTED

HWL Associates
Heartland Co. Ltd
Lapson International
Paul Reed Inc.
Rodolph Inc.

APPENDIX II

FACT SHEET ON PEFORMANCE OF THE TEXTILE AND APPAREL INDUSTRIES

OUTPUT

- Shipments

Shipments of textile mill products rose 4 percent in 1986 compared with 1985, reaching $54.7 billion.

Value of Shipments

1985	1986	Change (percent)
(billion $)		
52.6	54.7	4.0

- Exports

Textile and apparel exports increased by 7 and 18 percent respectively in the past year.

Exports
January-October

	1985	1986	Change (percent)
	(million $)		
Textiles	1,985	2,128	7.2
Apparel	630	745	18.3

- Index of Industrial Production

The index of industrial production for textiles increased 8.5 percent in October 1986 compared with October 1985. The October 1986 index is 14.0 percent higher than the 1985 average and 12.7 percent higher than the 1984 average. The production index for apparel also increased in November 1986 by 1.4 percent compared to November 1985.

Index of Industrial Production (1977=100)
October

	1985	1986	Change (percent)
Textiles	107.7	116.9	8.5
Apparel	102.1	103.5	1.4

- Capacity Utilization

Capacity utilization in the textile mill industry hit a historic high in November 1986 of 95.2 percent. Capacity utilization in the apparel industry reached 87.9 percent in November 1986, compared to 79.9 percent for all manufacturing.

Capacity Utilization
November

	1985	1986 (percent)	Change
Textiles	89.3	95.2	6.6
Apparel	88.5	87.9	-.7
All Manufacturing	80.1	79.9	-.3

- Productivity

Productivity in the textile industry continues to increase.

Index of Productivity (1977=100)
Measured in Terms of
Real Output per Worker

	1983	1984	1985	Change, 1985/1984 (percent)
Textiles	142.1	143.2	152.3	6.4

EMPLOYMENT, UNEMPLOYMENT, HOURS WORKED, AND WAGES

- Employment

Employment in the textile and apparel industries in 1986 was slightly higher in 1986 than in 1985, as a significant gain in the textile area more than offset a slight dip in apparel employment.

Employment
December

	1985 (thousand workers)	1986 (thousand workers)	Change (percent)
Textiles	702	719	2.4
Apparel	1130	1124	-0.1
Total	1832	1843	0.1

- **Unemployment**

Unemployment has declined in the textile industry by 6 percent, but increased by 1 percent in the apparel industry over the past year.

Unemployment
November

	1985	1986	Change
	(thousand workers)		(percent)
Textiles	66	62	- 6.1
Apparel	169	171	- 1.2

- **Hours Worked**

The average number of hours worked per week in the textile industry increased noticeably during the past 12 months, while hours worked in apparel moved ahead slightly.

Average Weekly Hours
December

	1985	1986	Change
	(hours)		(percent)
Textiles	41.0	41.8	2.0
Apparel	36.8	37.1	0.1

- **Wages**

Average weekly wages paid to production workers in the textile and apparel industry have also increased in the past year.

Average Weekly Wages
December

	1985	1986	Change
	(dollars)		(percent)
Textiles	280.03	297.62	6.3
Apparel	213.44	217.41	1.9

LEADING INDICATORS

- Cotton Consumption by U.S. Mills

October 1985	October 1986	Change
(thousand bales)		(Percent)
493	686	39.1

- Manmade Fiber Consumption by U.S. Mills

October 1985	October 1986	Change
(millions pounds)		(Percent)
139.9	180.5	29.2

- New Orders, Textile Mill Products

October 1985	October 1986	Change
(Index: 1980 = 100)		(Percent)
119.3	126.5	6.0

- Unfilled Orders, Broadwoven Fabrics

October 1985	October 1986	Change
(Index: 1980 = 100)		(Percent)
84.6	91.5	8.2

OTHER POSITIVE INDICATORS

- **Retail Sales**

Sales of apparel at retail continue to increase rapidly, providing room for growth for both domestically produced and imported apparel.

Sales in Apparel and Accessory Stores

January-October

1985	1986	Change
(million $)		(percent)
48,353	52,583	8.7

- **Profits**

Profits in the textile industry during the first 10 months of 1986 are nearly double the 1985 level.

January-September

1985	1986	Change
Earnings before taxes (million $)		(percent)
447	853	91

APPENDIX III

GENERAL AGREEMENT ON
TARIFFS AND TRADE

[illegible]
31 July 1986
Special Distribution

Textiles Committee

Original: English

PROTOCOL EXTENDING THE ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES

THE PARTIES to the Arrangement Regarding International Trade in Textiles (hereinafter referred to as "the Arrangement" or "MFA")

ACTING pursuant to paragraph 5 of Article 10 of the Arrangement, and

REAFFIRMING that the terms of the Arrangement regarding the competence of the Textiles Committee and the Textiles Surveillance Body are maintained, and

SUBJECT TO the Conclusions of the Textiles Committee adopted on 31 July 1986

HEREBY AGREE as follows:

1. The Arrangement shall be extended, in accordance with the Conclusions of the Textiles Committee, attached herewith and forming an integral part of this Protocol, for a period of five years until 31 July 1991.

2. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT. It shall be open for acceptance, by signature or otherwise, by the Parties to the Arrangement, by other governments accepting or acceding to the Arrangement pursuant to the provisions of Article 13 thereof and by the European Economic Community.

3. This Protocol shall enter into force on 1 August 1986 for the countries which have accepted it by that date. It shall enter into force for a country which accepts it on a later date as of the date of such acceptance.

Done at Geneva this thirty-first day of July, one thousand nine hundred and eighty-six, in a single copy in the English, French and Spanish languages, each text being authentic.

CONCLUSIONS OF THE TEXTILES COMMITTEE ADOPTED ON 31 JULY 1986

1. The participants in the Arrangement exchanged views regarding the future of the Arrangement.

2. Participants emphasized that the basic objectives of the MFA are to achieve the expansion of trade, particularly for the developing countries, the reduction of barriers to such trade and the progressive liberalization of world trade in textile products, while at the same time ensuring the orderly and equitable development of this trade and avoidance of disruptive effects in individual markets and on individual lines of production in both importing and exporting countries.

3. They stressed the importance of promoting liberalization of trade in textiles and clothing. In this connexion, they recognized the need for co-operative efforts by all participants. They agreed that the final objective is the application of GATT rules to trade in textiles.

4. It was reiterated that a principal aim in the implementation of the Arrangement is to further the economic and social development of developing countries and to secure a substantial increase in their export earnings from textile products and to provide scope for a greater share for them in world trade in these products. Participants undertook to contribute to this through improvement in bilateral agreements under this Arrangement, which should provide for increased effective access in overall terms.

5. Attention was drawn to the fact that decline in the rate of growth of per capita consumption in textiles and in clothing is an element which may be relevant to the recurrence or exacerbation of a situation of market disruption. Attention was also drawn to the fact that domestic markets may be affected by elements such as technological changes and changes in consumer preference. In this connexion it was recalled that the appropriate factors for the determination of a situation of market disruption as referred to in the Arrangement are listed in Annex A.

6. The importing participants undertook that where, in their view, a case of market disruption or real risk thereof exists in terms of the definition in paragraphs I and II of Annex A, requests for action under Articles 3 or 4 shall be accompanied by available, specific and relevant factual information as up-to-date as possible, particularly in respect of factors set out in Annex A. In respect of requests made under Article 3, the information should be related, as closely as possible, to identifiable segments of production and to the reference period set out in Annex B, paragraph 1(a). They agreed that actions based on the existence of serious damage to domestic producers or actual threat thereof in terms of paragraph I of Annex A cannot be based solely upon the level of imports or growth thereof. Participants agreed that in determining a situation of market disruption, due consideration has to be given to the evolution of the state of the domestic industry in the importing country, including its export performance and the market share held by this industry.

7. Participants agreed that in examining the factors causing a situation of market disruption, due consideration shall be given to both factors (i) and (ii) indicated in Paragraph II of Annex A.

APPENDIX IV

U.S. Production of Women's, Girls', and Infants' Sweaters (Categories 345 pt., 446, and 646)

(1,000 Dozen)

Year	Production
1980	5,589
1981	6,821
1982	7,006
1983	7,148
1984	7,925
1985	8,791

Source: U.S. Department of Commerce, International Trade Administration

U.S. Production of Cotton Sweaters
Category 345
1980-1985

Period	U.S. Production (1,000 Dozen)	Annual Growth (Percent)	Growth Since 1980 (Percent)
1980	423		
1981	950	124.6	124.6
1982	1,471	54.8	247.8
1983	2,033	38.2	380.6
1984	3,095	52.2	631.7
1985	4,723	52.6	1,016.5

Source: U.S. Department of Commerce, International Trade Administration

APPENDIX V

TEXTILE
& APPAREL
GROUP OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

EXIM

October 24, 1986

Mr. William H. Houston, III
Deputy Assistant Secretary
for Textiles and Apparel
Chairman, Committee for the
Implementation of Textile Agreements
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Suite 3100
Washington, D.C. 20230

Subject: Request for Consultations on Category 845/846 from China and Macau

Dear Mr. Houston:

We are writing on behalf of the Textile and Apparel Group of the American Association of Exporters and Importers ("AAEI-TAG") in response to the Federal Register notice of October 6, 1986 (51 FR 35546-7), soliciting comments with respect to requests for consultations (calls) with the governments of The People's Republic of China and Macau concerning imports of sweaters of silk blends and vegetable fibers (other than cotton) classified in category 845/846.

AAEI-TAG believes there is no justification for establishing restraints on imports in these categories from either country and strongly urges that the calls on these categories be withdrawn.

The calls in question are the first issued by the United States under the provisions of Paragraph 24 of the Protocol of Extension ("Protocol") to the Multifiber Arrangement ("MFA") adopted on July 31, 1986, extending the MFA's coverage to products of fibers other than cotton, wool, and man-made fibers. Paragraph 24 of the Protocol for the first time allows importing countries to invoke Articles 3 and 4 of the MFA with respect to imports of these products.

11 WEST 42ND STREET NEW YORK N.Y. 10036 • (212) 944-2230

However, actions under Paragraph 24 can only be taken against imports 1) "which are directly competitive with textiles made of fibers specified in Article 12," i.e., directly competitive with articles of cotton, wool, and man-made fibers, and 2) "which cause market disruption or real risk thereof."

The ramie, ramie blend, and silk sweaters in question do not compete directly with U.S. sweater production. No indigenous ramie, ramie blend or silk blend sweater producing industries exist in the United States, and these sweaters have an independent market niche apart from cotton, wool, and man-made fiber sweaters, as a result of differences in hand, feel, weight and dyeing capabilities.

Yet even if it were assumed that ramie, ramie blend and silk blend sweaters compete directly with U.S. sweater production, the calls in question raise a far more serious and fundamental issue. There is not the slightest evidence that U.S. sweater producers are suffering or threatened with market disruption from these imports as required under Article 3 and Annex A of the MPA and paragraph 24 of the Protocol. On the contrary, whether viewed as a whole or in those segments where any presumed competition from these imports would be occurring, the U.S. sweater industry is strong and growing, with every expectation that it will continue to grow and prosper. As such, the calls in question fail to meet the threshold test under the MPA for taking actions to restrict imports.

The lack of market disruption in the U.S. sweater industry is evident from the steady growth of U.S. sweater production in recent years. Overall 1985 U.S. production of cotton, wool, and man-made fiber sweaters (the most recent data available) was at its highest level since 1977, 5.1 percent above 1984 production and 32 percent above the 1980 level:

Table 1

U.S. SWEATER PRODUCTION
Categories 345, 445, 446, 645, 646
(1000 dozens)

Year	Production
1980	8,658
1981	10,464
1982	10,602
1983	10,532
1984	10,876
1985	11,433

Source: U.S. Department of Commerce, International Trade Administration

The total absence of any market disruption is even more apparent from the performance of those market segments where the imports in question would be presumed most directly competitive. Over eighty percent of category 845/846 imports from both China and Macau are women's, girls', and infants' ramie/cotton blends. As such, these imports, to the extent they compete directly with U.S. production at all, compete in the women's, girls', and infants' cotton sweater sectors. However, the growth of U.S. production in these sectors far exceeds the growth of U.S. sweater production overall. U.S. production of women's, girls', and infants' sweaters increased 10.9 percent in 1984 and 10.9 percent again in 1985, with 1985 production 57.3 percent above 1980 production:

Table 2

U.S. Production
of Women's, Girls', and Infants' Sweaters
(Categories 345 pt., 446, and 646)
(1,000 Dozen)

Year	Production
1980	5,589
1981	6,821
1982	7,006
1983	7,148
1984	7,925
1985	8,791

Source: U.S. Department of Commerce, International Trade Administration

Yet it is the extraordinary growth in U.S. production of cotton sweaters overall and of women's, girls', and infants' cotton sweaters which conclusively demonstrates that no call is justified on the imports in question. In both cases, production has set a record in each year since 1981, with annual growth ranging from a minimum of 28.8 percent to over 148 percent. Overall, U.S. cotton sweater production in 1985 increased by 52.6 percent over 1984, and by over 1016.5 percent since 1980:

Table 3

U.S. Production of Cotton Sweaters
Category 345
1980-1985

Period	U.S. Production (1,000 Dozen)	Annual Growth (Percent)	Growth Since 1980 (Percent)
1980	423		
1981	950	124.6	124.6
1982	1,471	54.8	247.8
1983	2,033	38.2	380.6
1984	3,095	52.2	631.7
1985	4,723	52.6	1,016.5

Source: U.S. Department of Commerce, International Trade Administration

Similarly U.S. production of womens', girls', and infants cotton sweaters increased by 65.2 percent in 1985 over 1984, and by 1102.8 percent between 1980 and 1985:

Table 4

U.S. Production of Womens', Girls', and Infants
Cotton Sweaters, Category 345 pt.
1980-1985

Period	U.S. Production (1,000 Dozen)	Annual Growth (Percent)	Growth Since 1980 (Percent)
1980	351		
1981	847	148.4	148.4%
1982	1,281	51.2	265 %
1983	1,650	28.8	370.1%
1984	2,555	54.8	627.9%
1985	4,222	65.2	1,102.8%

Source: U.S. Department of Commerce, International Trade Administration

If it is presumed that the imported sweaters in question compete directly with U.S. sweaters, it is obvious that the growth of these imports is a direct result of the exploding demand for cotton sweaters seen equally in the astonishing increase of U.S. cotton sweater production. Under the circumstances, import growth was essential to meet market demand and did not harm the U.S. industry. This is particularly the case as the domestic sweater industry has been operating at or near capacity for years.

As early as 1980, Kurt Salmon Associates ("KSA") explained this situation in a study prepared for the Commerce Department:

> Total U.S. consumption of women's and girls' sweaters had grown sharply over the last 10 years. However, installed domestic manufacturing capacity has remained constant and has not been modernized. A real capacity problem exists in the United States forcing the merchandisers to continuously increase foreign sourcing.

Source: Marketing Strategies for U.S. Apparel Producers to Compete More Effectively with Imports, prepared for U.S. Department of Commerce, Grant No. 99-26-09857-10, February 1986

KSA further noted the capacity situation was probably irreversible (Id. at 155). While the KSA study focused on women's and girls' sweaters, this segment accounts for over three-quarters of the U.S. sweater industry's production.

The growth of the U.S. sweater industry and of the U.S. cotton sweater industry has continued unabated into 1986. The International Ladies Garment Workers Union, in a report just issued, indicated U.S. production of women's sweaters increased 13.5 percent for the first eight months of this year. Similarly, a recent issue of the Daily News Record, the men's apparel industry daily, reported that sales for sweaters have continued to get stronger, with full weight cottons and wool sweaters leading the way, and that sales of cotton sweaters are expected to continue through the late fall and even winter, "Fashion Forward Men's Specialists Say Sweater Sales are Booming," Daily News Record, September 29, 1986. Moreover, as reported in the September 10, 1986, issue of Women's Wear Daily, the women's apparel daily, the domestic industry itself is upbeat about the future:

> The mood was decidedly upbeat at an American knitwear rally here Tuesday when a group of industry leaders predicted that a strong upsurge in American knitwear business was in the making for the years ahead. "The American knitting industry is about to embark on a five-year expansion that will spell good times for spinners, knitters, and knitwear manufacturers" predicted Joseph Loff, President of National Spinning Co.

The optimism expressed in these recent news articles regarding the future of the U.S. sweater industry contradicts any suggestion that the industry is threatened with market disruption as a result of silk blend and ramie sweater imports from China and Macau. The recent calls on China and Macau in category 845/846 are completely incongruous with the undisputable evidence that the U.S. sweater industry is healthy and thriving, and the requirement of the MFA, reiterated in Paragraph 6 of the Protocol, that "actions based upon the existence of serious damage to domestic producers or actual threat thereof in terms of paragraph I of Annex A cannot be based solely upon the level of imports or growth thereof." By issuing these calls, the Government is therefore ignoring both the realities of the U.S. market and the fundamental premise of the MFA that restraints not be established in the absence of actual or threatened market disruption. As American businessmen, the members of AAEI-TAG object to the unnecessary disruption of their operations which results from restraints and possible embargoes on these products. By any reasonable balancing of the interests of the U.S. sweater industry and the interests of importers and retailers and their customers, U.S. consumers, no restraints should be imposed on category 845/846 imports. AAEI-TAG strongly urges that the calls on category 845/846 on China and Macau be withdrawn. Moreover, in light of the performance of the U.S. sweater industry in recent years, AAEI-TAG urges that serious consideration be given to lifting existing restaints on imports of sweaters generally, and, at a minimum, of lifting restraints on imports of cotton sweaters.

We appreciate this opportunity to present these comments.

Sincerely,

Textile and Apparel Group, American
Association of Exporters and Importers

By: ______________________________
Julie Hughes, Co-Chairman

____
Gordon Freund, Co-Chairman

United States Department of State

Washington, D.C. 20520

DEC 2 - 1986

Dear Ms. Hughes:

Thank you for the letter from you and Mr. Freund of October 31, 1986 addressed to Mr. McMinn and the enclosed letter to Mr. Houston concerning recent U.S. requests for consultations on silk blend and vegetable fiber sweaters in Category 845/846 from the People's Republic of China and Macau. We appreciate receiving your comments.

The requests for consultations on imports of Category 845/846 sweaters from China and Macau were made after careful consideration by the Committee for Implementation of Textile Agreements (CITA) of the requirements in Paragraph 24 of the Protocol of Extension of the Multifiber Arrangement. Sweaters of silk blend and vegetable fibers are directly competitive with sweaters of cotton, wool and man-fiber, and imports in Category 845/846 from China and Macau are disrupting the U.S. market for sweaters.

Concerning your points on cotton and other sweater production in the United States, domestic sweater production in all fibers declined from 1972 to 1983. Although there has been some increase in production in 1984 and 1985, figures for these years remain lower than the level of production in 1972.

Imports of sweaters of all fibers to the United States have continued to increase dramatically since 1982. The 1985 level of imports is 37 percent higher than the 1982 level and is almost twice the level of imports in 1972. When imports of silk blend and vegetable fiber blend sweaters are taken into account, the level of imports has almost tripled since 1972.

Domestic manufacturers face strong price competition from foreign suppliers, especially China and Macau. U.S. manufacturers share of the domestic sweater market has fallen to thirty percent. In short, CITA concluded that the U.S. sweater market is being disrupted by low-cost imports.

Ms. Julie Hughes, Co-Chairman,
Textile and Apparel Group,
American Associational Exporters
and Importers,
New York, New York 10036.

Silk blend and vegetable fiber sweaters from Hong Kong and Taiwan now are controlled either by Specific Limits or Group Limits under new bilateral textile agreements signed this year. In keeping with equity requirements under the Multifiber Arrangement, the United States Government could not ignore growing imports of these sweaters from China and Macau.

We appreciate your comments and will keep these points in mind should we consider further calls on Category 845/846.

Sincerely,

Ann L. Hollick, Acting
Deputy Assistant Secretary
for Trade and Commercial Affairs

EX IM
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Cable: AAOEXIM

Textile & Apparel Group

March 4, 1987

The Honorable Sam Gibbons
Chairman
Subcommittee on Trade, Committee
  on Ways and Means
U.S. House of Representatives
2204 Rayburn House Office Building
Washington, D.C.   20515

Dear Congressman Gibbons:

During the Trade Subcommittee's Hearing of February 27, Doug Tompkins of Esprit de Corp., a witness at the Hearing, put forward a proposal to establish global import quotas for all categories of textile and apparel products to be allocated under a system of import licensing, and to establish a surcharge on all textile and apparel imports. Mr. Tompkins stated in his testimony that he spoke only for his company in presenting his testimony. Even though Esprit de Corp. is a member of our organization, AAEI-TAG wishes to go on record as strongly opposed to Mr. Tompkins' proposals.

Sincerely,

Gordon Freund
Gordon Freund
J.C. Penney Company, Inc.
Co-Chairperson

Julia K Hughes
Julia K. Hughes
Associated Merchandising
  Corporation
Co-Chairperson

REPORT OF THE ANTITRUST SECTION OF THE AMERICAN BAR ASSOCIATION ON S. 1655

INTRODUCTION

In this Report, the Antitrust Section of the American Bar Association submits its comments concerning S. 1655, a bill which would amend the so-called Antidumping Act of 1916 (15 U.S.C. § 1672). We believe that S. 1655 raises serious questions concerning antitrust law and policy, and that the bill contains some procedural flaws which should be addressed.

I. BACKGROUND: THE ADMINISTRATIVE REGULATION OF DUMPING

"Dumping" is a term used to describe a practice sometimes occurring in international trade of selling a product in a foreign market for less than it is sold in the producer's home market. See Jackson, World Trade and the Law of GATT, at 332, 402 (1969). Since 1921 (see 42 Stat. 11), the practice has been regulated through the imposition of an antidumping duty on merchandise which is found to have been sold for less in the United States than in the foreign producer's home market, where such pricing has injured or is threatening injury to a U.S. industry producing similar goods. See S. Rep. 96-249 on H.R. 4537 (96th Cong., 1st Sess. 1979) at pp. 60-79.

The U.S. dumping law, extensively revised by the Trade Agreements Act of 1979 (P.L. 96-39, 93 Stat. 144) is now administered jointly by the Department of Commerce and the U.S. International Trade Commission. See 19 U.S.C. 1673 et seq. The Commerce Department's International Trade Administration conducts an investigation to determine whether the subject merchandise is being sold in the United States at "less than fair value," a technical term which usually refers to the price at which similar merchandise is sold in the markets of the country where produced. 19 U.S.C. § 1677b(a). Where sales in that country (the "home market") are non-existent or too small to be meaningful, the law authorizes comparison with sales to a third-country or, where that is not possible, with a "constructed value" based on actual costs of imports, plus overhead and profit margins. Id.

The Commerce Department's pricing investigation typically is of sales occurring during the six-month period preceding the filing of the petition (19 C.F.R. § 353.38), and its objective is to compare prices for export to the U.S. and for sale in the home market (or, if necessary, in a third-country market or under a constructed value approach) on an ex-factory basis. 19 C.F.R. §§ 353.3, 353.5, 353.6, and 353.10. Where a foreign manufacturer maintains its own distribution system in the U.S. so that the first arms-length sale occurs after the goods arrive in the U.S., the price of that sale must be adjusted so that its ex-factory equivalent can be determined.

Other adjustments frequently must be made to the United States and home market prices to account for qualitative factors, such as differences in market conditions or, product composition in the two markets. Such adjustments are necessary when, for example, sales in one market are to distributors and in the other to end-users or, where product servicing or warranties offered in one market are different from those offered in another market. See, generally, 19 C.F.R. §§ 353.1–353.23. See, e.g., Motorcycle Batteries from Taiwan, 47 Fed. Reg. 9264, 9267 (March 4, 1986). The objective of these adjustments is to assure that the U.S. and foreign sales prices being compared are comparable in a commercial sense.

After these adjustments are made, the Department will compare the adjusted ex-factory price of each U.S. sale during the six-month investigation period with the foreign market value of the product (converted to dollars) at the time each U.S. sale is made.

Where the foreign sales prices constituting foreign market value fluctuate, or where exchange rates are unstable, the Commerce Department may shape a specific technique to calculate a foreign market value for use in the price comparison. See, e.g., Melamine Chemicals, Inc. v. United States, 732 F.2d 924 (C.A.F.C. 1984). The amount by which the foreign market value exceeds the U.S. price is the amount of dumping margin. By weight-averaging dumping on all sales during the six-month investigation period, the Department derives a single, less than fair value (or dumping) percentage for its investigation. See, e.g., Motorcycle Batteries From Taiwan, 47 Fed. Reg. 9264, 9268 (1982).

If there is a dumping margin greater than 0.5 percent (which the Department considers de minimis), the International Trade Commission will determine whether the dumped imports are injuring or threatening injury to a domestic industry producing a like product, or retarding the establishment of an industry.[1] Under the antidumping law, "injury" can be based on revenue decline, lost sales, declining market share, declining profitability, declining prices or similar phenomena reflecting on the aggregate health of the industry. 19 U.S.C. 1677(7). The law's injury requirements are satisfied if the industry is suffering more than de minimis injury, and if the dumped imports are a cause (not the cause, and not necessarily a cause more important than other causes) of such injury. See, e.g., Maine Potato Council v. United States, 613 F.Supp. 1237, 1243 (Ct. Int'l Trade 1985); British Steel Corp. v. United States, 593 F.Supp. 405, 513 (Ct. Int'l Trade 1984) (countervailing duty case).[2]

If sales at less than fair value exist (as determined by Commerce) and if the ITC determines that the imported products are a cause of material injury to a U.S. industry, or are threatening such injury, the Commerce Department will enter an antidumping order, which will require entries of the merchandise under investigation to bear a provisional antidumping duty (known as a "cash deposit") in the percentage amount previously determined by the Commerce Department. Actual dumping duties are assessed retroactively, beginning on the anniversary of the dumping order, and are based on a review of actual sales prices (in the U.S. and home markets) during the previous 12 months. 19 U.S.C. § 1675(a).

II. THE CURRENT PRIVATE CIVIL REMEDY FOR DUMPING AND THE CHANGES PROPOSED BY S. 1655

A. The Antidumping Act of 1916

Since 1916, a civil cause of action for dumping has existed in a section of the Revenue Act of that year, more commonly known as the 1916 Antidumping Act (the "1916

1/ If the Commerce Department finds no dumping or a margin of 0.5 percent or less, the investigation will be dismissed at this stage. (A recent Court of International Trade decision, Carlisle Tire & Rubber Co. v. U.S., No. 84-7-01058, slip. op. (U.S.C.I.T. April 29, 1986), however, questions the Commerce de minimis rule.)

2/ There is controversy among members of the ITC over whether the injury must be attributable to the margin of dumping (e.g., did the price differential allow imports to undersell domestic competitors?), or merely to the presence of the investigated imports in the U.S. market. This difference in analysis is crucial in cases where dumped imports would undersell U.S. producers (and therefore gain market share and depress prices) even if their prices were raised to foreign market value levels. In such cases, proponents of "margin analysis" have argued that dumping is irrelevant to "injury" to the U.S. industry, which would have occurred anyway. ITC Commissioners are split on this issue. Compare Carbon Steel Wire Rod from Brazil, Belgium, France and Venezuela, Inv. Nos. 701-TA-148 through 150 (Preliminary) and 731-TA-88 (Preliminary), 3 ITRD 1976 (U.S.I.T.C. 1982) with Certain Carbon Steel Products from Spain, Inv. Nos. 701-TA-155, 157-160, 162 (Final), 4 ITRD 2030 (U.S.I.T.C. 1983). What judicial authority there is suggests that the margin of dumping should not be considered in an injury analysis. See Maine Potato Council v. United States, 6 ITRD 2452, 2455 (Ct. Int'l Trade 1985).

Act"), 15 U.S.C. § 72. While differential pricing in international markets is at the core of both the administrative and civil antidumping statutes, there are significant differences in the two. First, the 1916 Act operates in an in personam manner against any person who imports or assists in importing into the United States articles from a foreign country, and (like most civil remedies) imposes damages for past injuries sustained as a result of the proscribed conduct. The administrative or government remedy, on the other hand, operates as a tariff on imported merchandise, is triggered by past conduct (i.e., the initial investigation period is the six months preceding the filing of a petition), but is prospective in effect.

Second, the statutes differ in terms of the behavior which they proscribe. Under the 1916 Act, differential pricing must be "common and systematic." This provision is not present in the administrative statute, which can be violated by sporadic instances of less than fair value sales during the period of investigation, if the subject imports injure or threaten injury to the domestic industry. See, e.g., Certain Carbon Steel Products from Brazil, 49 Fed. Reg. 28296 (July 11, 1984) (less-than-fair-value finding based on dumped imports which constituted eight percent of respondents' total sales in U.S. market). Also, the differential pricing must be done with predatory or other anticompetitive intent directed to a U.S. industry. Cf., Zenith Radio Corp. v. Matsushita Elec. Ind. Co., Ltd., 723 F.2d 319 (3d Cir. 1983). No comparable intent provision appears in the administrative statute. See, e.g., Fresh Cut Roses from Columbia, 49 F.R. 30765 (1984). The 1916 Act also requires that the price differential be "substantial," which is probably different than the 0.5 percent threshold administratively applied in government antidumping investigations.

B. The Effect of S. 1655 on Current Law

S. 1655 would repeal the provisions of the Antidumping Act of 1916, as described above, and create a new civil cause of action for dumping which would rely on the substantive elements of the government statute (sales at less than fair value causing injury to a domestic industry).[3] While differential pricing between U.S. and foreign markets would remain at the heart of the new civil claim, its specific elements would change significantly.

One important effect of S. 1655 would be the elimination of predatory intent ("the intent of destroying or injuring an industry in the United States, or of restraining or monopolizing any part of the trade and commerce in such articles in the United States" (15 U.S.C. § 72)) as an element of the civil cause of action. Under S. 1655, there would be no requirement that the differential pricing have an anticompetitive purpose or effect. Although the bill would require proof of "injury to a domestic industry" resulting from the dumped imports, such injury may be different from injury to competition; in competition law terms, injury to a domestic industry may be akin to injury to competitors, a phenomenon not of itself protected under the antitrust laws. See Brunswick v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 488 (1977).[4] While injury to competition and injury to a domestic industry may, in some cases, arise from the same conduct, the two terms are legally different and relate to the

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3/ The new law would become one of the "antitrust laws of the United States." While this declaration has little substantive impact on the law, we believe it could create confusion. As the June 17, 1985 comments of the Federal Trade Commission on S. 236 (a predecessor to S. 1655) point out, being part of the "antitrust laws of the United States" means that certain common definitions and procedures of the Clayton Act apply. For example, the Clayton Act governs venue, tolling of the statute of limitations, damages, and standing to sue. 15 U.S.C. § 15, 16, 16b, 22. S. 1655, however, has its own, different provisions governing these concepts. This potential for confusion can be avoided, with no substantive cost to S. 1655, by eliminating the declaration that it is one of the "antitrust laws of the United States."

4/ Injury to a domestic industry, for example, has been held to result from such arguably pro competitive effects as aggressive price competition and the demise of inefficient producers. See, e.g., Rhone Poulenc, S.A. v. United States, 592 F. Supp. 1318.

different objectives of the antitrust laws (protection of competition) and the antidumping laws (protection of domestic industries).

The absence of any requirement of predatory intent is compounded by S. 1655's substitution of such trade concepts as "constructed value" for the present language of the 1916 Act. The present language, in referring to "actual market value or wholesale price of such articles," effectively limits the Act's application to actual transactions involving commercially interchangeable products. S. 1655, on the other hand, would permit proof of price discrimination by means not only of actual prices for comparable products in the foreign market, but also through comparison with "constructed value" and other highly technical terms, which might result in price comparisons between products not commercially interchangeable.

Second, the type of domestic economic injury which would be redressable under S. 1655 is broader not only than that of the 1916 Act (injury to a domestic industry), but even that of the administrative statute. Under S. 1655, less than fair value sales which cause or threaten injury to industry or to labor[5] in the United States, or which prevent "in whole or in part, the establishment or modernization of an industry" [6] would satisfy the domestic injury element.

Third, the proposed legislation would alter the class of plaintiffs who have standing to seek recovery. S. 1655 permits "interested parties" who are injured in their business or property to seek a private remedy. This differs from the 1916 Act (and from earlier versions of S. 1655), and from Section 4 of the Clayton Act, which authorize "any person" injured in its business or property to seek recovery. Although S. 1655 does not define the term "interested parties" as it is to be used in the amended antidumping law, we believe that it may be interpreted as having a broader meaning than the term, "party." The term is defined in the bill's other main section (concerning private enforcement of the customs fraud statute) to mean U.S. manufacturers, producers, or wholesalers of like or competing products, or trade and business associations representing such persons. It is also defined in the administrative statute itself (at 19 U.S.C. § 1677(8)) to include the foregoing, and certified or recognized unions or groups of workers representative of an industry producing or wholesaling like products as well. In light of these references, and the fact that the S. 1655 "injury" test includes injury to labor, a reasonable interpretation for "interested party" is that it may include labor unions and other worker groups as plaintiffs. Worker groups would presumably sue for damages based on lost jobs or reduced wages due to import competition. See n.5, supra.

Finally, S. 1655 would change the type of differential pricing that would give rise to civil liability. Instead of the 1916 Act's proscription of "common and systematic" U.S. sales at prices "substantially less than" foreign market prices, the bill would substitute the technical provisions of the administrative statute (discussed at pp. 1-2). A possible result of this change would be that sporadic (or even isolated) and unintentional differential pricing would support a civil claim, as would differential pricing that, although insubstantial, produced a dumping margin of more than 0.5 percent (see n.1 and accompanying text, supra).

The proposed legislation would, in addition, change the law to plaintiffs' benefit by giving evidentiary value to the results of related government dumping proceedings. In

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5/ The administrative antidumping statute, in contrast, is concerned only with injury or threat thereof to industry. An injury to labor could occur, for example, if low-priced imports required a U.S. industry to accelerate automation of its manufacturing processes, thereby displacing workers.

6/ Under the administrative statute, material injury could be based on material retardation of the establishment of a U.S. industry. 19 U.S.C. 1673. "Prevention of modernization" is an injury concept not found in the current dumping law.

particular, final affirmative determinations of sales at less than fair value by the Commerce Department, or of injury or threat of injury by the U.S. International Trade Commission, would be prima facie evidence in a civil case of that particular element of the cause of action.

III. S. 1655 RAISES ANTITRUST POLICY CONCERNS BECAUSE IT FAILS TO INCLUDE A COMPETITIVE INJURY TEST

We believe that the legal standards provided by S. 1655 are inconsistent with current U.S. antitrust law and policy and could have an adverse effect on competition in the United States, particularly in industries where imports are or may become significant competitive factors. By reason of its definition of prohibited pricing practices and the uncertainty created by the wording of various provisions relating to both substantive and procedural aspects, S. 1655 would tend to forbid or inhibit the most important form of competition -- that relating to price.

First, an examination of the elements of a cause of action under S. 1655 indicates that the bill would attach civil liability to conduct which, if it occurred wholly with the United States, might not be illegal under our antitrust laws. Under the bill, a substantive offense is established by showing differential pricing between the U.S. and foreign markets and injury to a domestic industry from the imported product. As noted earlier in this Report, "injury" under the administrative antidumping law means economic losses suffered by the affected U.S. industry (e.g., loss of market share, declining prices, etc); it does not necessarily mean injury to competition.[7] Nothing in the bill in any way implicates a purpose or effect to restrain trade, or to substantially lessen competition or to tend to create a monopoly, one or more of which elements are generally found in the U.S. antitrust laws. See Sections 1 and 2 of the Sherman Act (15 U.S.C. § 1,2), Sections 2, 3, 7 of the Clayton Act (15 U.S.C. § 13, 14, 18). Anticompetitive purpose is also part of the 1916 Antidumping Act, which S. 1655 would amend.

S. 1655 should be compared with the domestic commerce analog of the antidumping law -- Section 2 of the Clayton Act, as amended, the so-called Robinson-Patman Act, 15 U.S.C. § 13. Like the 1916 Act in international commerce, the Robinson-Patman Act prohibits discrimination in price by sellers in domestic sales but only, "where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination...." Id. at § 13(a). Moreover, an affirmative, pro-competitive defense to a Robinson-Patman price discrimination charge may be based on the ground that the lower price "was made in good faith to meet an equally low price of a competitor...." 15 U.S.C. § 13(b).

Although their details differ, the Robinson-Patman Act and the 1916 Antidumping Act are similar in that both require a nexus between the proscribed pricing behavior and competition -- anticompetitive effect under Robinson-Patman and anticompetitive intent under the 1916 Act. S. 1655, on the other hand, would do away with any required anticompetitive purpose or effect. Under it, a set of transactions in international commerce (United States and foreign market sales at different prices) could be illegal where the same transactions, but in two different U.S. markets or to two different U.S. customers, would be legal. There would, moreover, be no analogous defense to a S. 1655 claim based on the exporter pricing his goods to "meet competition."

7/ In some cases, the same facts which support a finding of injury to competitors may also support a finding of injury to competition. Predatory pricing which significantly reduces the number of competitors would likely support both findings. Aggressive pricing of imports which was not predatory might be found to injure competitors, but might also be pro-competitive by reducing prices to consumers and eliminating inefficient producers.

In addition to this inconsistent treatment of differential pricing depending on whether it occurred wholly or only partly in domestic commerce, S. 1655's private cause of action could have actual anticompetitive consequences, particularly in industries in which imports are or may be significant competitive factors. Because S. 1655 creates a civil cause of action for damages for injury to business or property founded only on a differential in pricing between the U.S. and some foreign country, and an effect of the imports on a U.S. industry, an unprecedented offense would exist for single firm conduct having no necessary connection to monopolistic, predatory or other anticompetitive purpose or effect, and which may in fact be pro-competitive.[8] The law could thus penalize price competition in the United States by foreign producers who were selling the same product at a higher price in their home market. Such differential pricing can occur for a variety of competitively "innocent" reasons. The home market, for example, may not be as competitive as the U.S. market, or its currency may be overvalued relative to the dollar, thus making its home market prices, when converted to dollars for price comparison purposes, seem higher than they should be.

The law could also penalize price competition in the United States by foreign producers who were not even selling a comparable product in their home market, but whose U.S. prices were below the hypothetical "constructed value" concept borrowed from the administrative statute. Such pricing might not be predatory or otherwise anticompetitive (and so no claim under Section 2 of the Sherman Act could be made), and yet it could support a claim under S. 1655 seeking damages for lost sales or profits. Without predatory intent as an element of the cause of action, successful aggressive pricing by imports could be inhibited because it could support a claim for damages by injured domestic competitors.

S. 1655 also has certain remedy provisions which may be unwise from a competition law perspective. The bill contains provisions, as are found in other federal remedial statutes, for money damages and recovery of attorneys fees and other expenses. However, it also provides an unusual form of injunctive relief as a substantive remedy for violation of the law: "an injunction against further importation into, or sale or distribution within, the United States by such defendant of the articles in question...." S. 1655 also appears to reverse the rule that equitable remedies may be imposed only if legal ones are inadequate (see Dobbs, Remedies § 2.5 at 57 (1973)), by authorizing damages as a secondary remedy, "if injunctive relief cannot be timely provided or is otherwise inadequate." S. 1655, Sec. 801(c).

We believe that this injunctive provision is unsound. First, it authorizes an injunction against importation into, or sale or distribution within, the United States of the articles which are the subject of the litigation. Yet under the antidumping law, there is nothing intrinsically unlawful about the importation or sale of a particular product at less than fair value (unlike, for example, the sale of a product carrying a false trademark designation or which fails to meet applicable safety or health regulations). The alleged dumper can cure his conduct instantaneously by either raising its price to U.S. customers or by lowering its price to customers in its home market. Thus, an injunction against future importations or sale of the imported product in the U.S. is neither compensatory nor otherwise remedial, since it has no relationship to a violation of the law. All that such a remedy would accomplish is to bar access to the U.S. market to competing foreign products, which could have anticompetitive consequences.

8/ A most obvious example of a pro-competitive effect of less than fair value sales would be where the U.S. industry, prior to the introduction of imports into the domestic market, was highly concentrated and characterized by little price competition. Imports which undersold the domestic producers could cause "injury to a domestic industry" under S. 1655 by causing prices and sales revenues to decline, but could promote competition in the subject product market.

We are not informed of any reason why money damages are an inadequate remedy for violations of the current or any amended antidumping law. Under the analogous Robinson-Patman Act, there is a well-developed body of case law concerning damages arising from differential pricing, which could be adapted to the antidumping statute.[9] See, e.g., Halleb & Co. v. Produce Terminal Cold Storage Co., 532 F.2d 29 (7th Cir. 1976). If, for some reasons, money damages were inadequate, then the appropriate injunction should be one prohibiting that which is prohibited by the law -- sales at less than fair value -- not imports per se.

We also believe that the role of labor interests under S. 1655 warrants closer examination. Under the 1921 and 1916 Acts, an element of an antidumping offense is injury to a competing domestic industry (1921 Act) or intent to injure a domestic industry (1916 Act). Under S. 1655, importations or sales which cause or threaten material injury to "industry or labor in the United States" (emphasis added) would constitute an element of the cause of action. Under the bill, worker groups would presumably be able to sue for damages based on lost jobs or reduced wages due to competition from imports. The antitrust laws, on the other hand, are not thought to permit a cause of action by employees against a person who may have committed an antitrust offense against the employer (e.g., Solinger v. A&M Records, Inc., 586 F.2d 1304, 1311 (9th Cir. 1978).

IV. S. 1655, AS PRESENTLY DRAFTED, PRESENTS SEVERAL PROCEDURAL CONCERNS

Apart from the antitrust issues raised by S. 1655, we believe the bill contains other substantive and procedural concerns that should be addressed.

First, because of the adoption by S. 1655 of the standards of the administrative antidumping statute (which require the exercise of considerable discretion and judgment in their application), an exporter who sought to comply with U.S. antidumping laws could not be confident that his prices were not at less than fair value. For example, an exporter could not know in advance whether "foreign market value" would be calculated by weight-averaging his home market sales prices, by only using prices for sales close in time to each U.S. sale under investigation, or by one of several other techniques which have been utilized in the past by the Commerce Department. The very uncertainty as to whether prices met the "standard" of S. 1655 would tend, of itself, to inhibit if not prevent price competition, the most important mode of competition, and would thus compound difficulties under the bill.

Under the government statute, actual antidumping duties are only assessed after a dumping determination, i.e., after a less than fair value pricing methodology for the case has been decided by the Commerce Department. Armed with that information, the affected exporter can make necessary pricing adjustments and know, with a high degree of confidence, whether or not his prices thereafter will subject his exports to antidumping duties. If, on the other hand, the statute were administered judicially, an exporter would be at his peril in pricing goods for sale in the United States, because the same process which established the less than fair value methodology would also invoke potential civil liability for importations during the four-year statute of limitations period.

9/ S. 1655 also contains, in Sec. 801(H), a provision authorizing an injunction against further imports or sales of the products in litigation by any defendant which fails to comply with a discovery or other interlocutory order of the court. We believe that this provision is simply overkill. The Federal Rules of Civil Procedure (in particular, Rule 37(b)(2)) provide ample means for enforcing discovery obligations, including contempt proceedings and the entry of a default judgment. These sanctions have been used against foreign parties (see, e.g., Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinea, 456 U.S. 694 (1982)), and there is no reason to conclude that a civil antidumping case cannot be effectively litigated with the same rules of procedure as other federal court litigation against foreign persons.

A second concern arises from Section 801(D) of S. 1655, which would give prima facie effect in private civil actions to less than fair value determinations by the Commerce Department and to injury determinations by the ITC in administrative dumping proceedings involving a product in issue in the civil action. A Commerce Department finding of less than fair value sales means nothing more than, during its six-month investigation period, there was a weighted average dumping margin of a particular amount. It is not clear under S. 1655 what effect such a dumping finding would have in the civil action. If it is that the defendant sold at less than fair value during the full four-year period of the civil claim (or some other period that is greater than or otherwise different from the Commerce six-month investigation period), then such an effect is clearly unwarranted, since the Commerce finding is limited to its six-month investigation period.

The provisions of S. 1655 also suggest that a Commerce Department dumping finding may be asserted against *any* exporter of the product subject to the dumping finding.[10] Under Commerce Department regulations, the agency will usually investigate exporters accounting for at least 60 percent of the dollar volume of exports to the United States. 19 C.F.R. 353.38. Under an increasing caseload in recent years, Commerce has tended to investigate only major exporters and often excludes from its pricing investigation exporters responsible for, in the aggregate, 20 to 40 percent of exports. *See, e.g.*, *Hydrogenated Castor Oil From Brazil*, Inv. A-351-410, 50 Fed. Reg. 51725, 51726 (Dec. 18, 1985). In such situations, the Commerce dumping determination will include individual dumping margins for the companies actually investigated, and a weight- averaged dumping margin for "other," uninvestigated exporters.[11]

It is entirely possible that these uninvestigated exporters did not sell at LTFV at all and yet, because of the method in which the government investigation operates, they could be subject to the prima facie evidence provision of S. 1655. (This potential unfairness under the administrative statute is mitigated when actual antidumping duties are assessed, since the assessment can be company-specific and based on actual sales prices of investigated and uninvestigated exporters.)

The use of ITC injury determinations as *prima facie* evidence also raises serious questions. The ITC appears to be moving in the direction of making injury determinations based on whether the imports under investigation are injuring a domestic industry, rather than whether the amount of dumping is causing such injury. *See* note 2 *supra*. For example, if Commerce determined that the aggregate margin of dumping were 2 percent, and the ITC determined that the investigated imports were injuring a domestic industry by underselling its products, the ITC could make an affirmative injury finding. It would not need to consider whether underselling would have occurred even if imports were priced 2 percent higher, *i.e.*, even if they were not sold at less than fair value. This difference in causation analysis is significant in a civil context, since the ITC's approach (if adopted by the courts) could allow recovery for underselling even if the margin of underselling were unrelated to sales losses or to other economic injury suffered by a domestic competitor.

An ITC determination also has temporal limitations. It typically studies "injury" spanning a two to three year period, usually assuming that the ITA 6-month dumping margin applied throughout the ITC's investigation period. Thus, the ITC could premise an injury determination on events occurring before and even after the ITA's six month investigation period, when there might not have been dumping in fact. Once again, this lack of rigor may be excusable under the present administrative statute because it operates prospectively only, allowing an exporter an opportunity to modify its pricing practices and thereby avoid the actual imposition of dumping duties. In an antitrust context, it hardly seems an appropriate basis on which to premise an award of compensatory damages or an injunction against imports.

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[10] As noted earlier in this Report, government dumping investigations are directed against a particular product from a particular country, rather than against a particular company.

[11] For example, if Exporter A, with a dumping margin of 10 percent and accounting for 40 percent of exports to the U.S., and Exporter B, with a 6 percent margin and accounting for 20 percent of exports, were the only two firms investigated, exporters accounting for the remaining 40 percent of exports would be in the "other" category, with an assigned margin of 8.67 percent ((.4 x 10% + .2 x 6%)/(.4 x .2)).

Finally, and as a general matter, the use of Commerce and ITC determinations for even the narrowest of purposes raises due process concerns. The determinations of these agencies are not made under the procedural protections of the Administrative Procedure Act. 19 U.S.C. § 1675(a). In addition, the agencies may rely on information from sources other than the parties, with little or no regard to its authenticity or reliability, there is no effective cross-examination of witnesses, and ex parte communications with Commerce investigating personnel and ITC staff and Commissioners are not prohibited.

This situation should be contrasted to that under Section 5a of the Clayton Act, which permits a "final judgment or decree ... rendered in any civil or criminal [antitrust] proceeding brought by or on behalf of the United States to the effect that a defendant has violated [the antitrust] laws" to be used as prima facie evidence in a private civil action, but only as to "matters respecting which such judgment or decree would be an estoppel as between the parties." 15 U.S.C. 16(a). S. 1655 contains no such limitation or other protection against the use of administrative agency findings reached without adequate procedural safeguards.[12]

V. CONCLUSION

Although the Antitrust Section of the American Bar Association takes no position on the trade policy issues involved in S. 1655, we are impelled to criticize, from the standpoint of antitrust law, both the substantive and procedural provisions of the bill. For the reasons set forth above, we believe that passage of the bill in its present form could seriously impair competition, particularly in those industries which benefit most from import competition.

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[12] One section of H.R. 4800, the House of Representatives' omnibus trade bill, approaches a civil remedy for dumping differently. It would add a new section to the administrative antidumping statute, authorizing a civil claim for damages arising from dumping, but only in situations where an administrative dumping investigation concerning the same product resulted in any antidumping order.

The House provision does not raise all of the procedural concerns discussed in this Section of our Report, but antitrust concerns remain. Under the House bill, a civil antidumping claim could be based upon (1) less than fair value sales and (2) consequential injury to a United States competitor. Like S. 1655, the House bill requires no proof of injury to competition. Unlike it, however, it requires no proof of injury to a domestic industry, presumably because the cause of action is authorized only after an ITC finding of such injury in an administrative dumping investigation.

As we noted in our discussion of the ITC's injury determination (p. 9), that determination has very limited significance in a civil context: it has temporal limitations, it may not even be based on the importations of a party that is a civil defendant, and it is reached under procedures that do not provide due process protections. Thus, for those causes of action it authorizes, the House bill may allow damages to be recovered for nothing more than differential pricing, whether pro-competitive or anti-competitive, and whether or not the defendant's imports were injurious to a domestic industry. As with S. 1655, we believe that such a remedy could have adverse effects on legitimate price competition from imports.

The provisions of the bill could significantly inhibit price competition in such industries and others which benefit from the purchase of low-priced raw materials and components. Without the direction provided by a competition test, the bill's provisions could be utilized to achieve anticompetitive results by those seeking to block further competition. Possible damage to the competitive standard would be further accentuated by those provisions which weaken the substantive tests presently required to recover civil damages for dumping -- e.g., those defining differential pricing, injury and injured parties. Finally, certain of the procedural provisions of the bill could drastically shift the burden of proof to defendants (e.g., the provision for giving prima facie effect to related administrative findings) and could endanger future as well as present competition (e.g., the proposed injunctions against future imports).

We submit that, regardless of its other possible merits, S. 1655 in its present form could exact a heavy price by its neglect of the competitive standard. We urge that the bill be rejected.

Submitted on behalf of the
Antitrust Section by
Barry E. Cohen, Chairman,
International Trade
Subcommittee

Statement of the American Cement Trade Alliance, Inc.

This statement is submitted for the record on behalf of the American Cement Trade Alliance, Inc. (ACTA), a national trade association located in Washington, D.C. The Alliance and its financial supporters represent a majority of U.S. production capacity currently in place, with ownership interests both foreign and domestic. The Alliance appreciates this opportunity to submit evidence in support of both the natural resource subsidy legislation and the refinement of tests concerning the standard for "material injury" in countervailing-duty and anti-dumping relief cases brought before the International Trade Commission.

I. INDUSTRY OVERVIEW

Making portland cement is an extremely energy-intensive and capital-intensive process involving the mining, crushing, grinding and blending of raw materials; heating the mixture to 2,700 degrees fahrenheit; and regrinding the product with gypsum to a consistency finer than face powder. About 40%–50% of the cost of manufacturing cement is the cost of energy.

Although concrete is one of the most essential and widely used construction materials, cement costs constitute only about 2% of the cost of construction. Excluding the transportation cost of delivery to the consumer, it is sold for less than 3 cents per pound.

More importantly, *the U.S. portland cement industry can produce cement as cheaply as anyone in the world.* This results from these facts:

Extensive capital investment in plant modernization and the conversion to energy-efficient technology using domestic coal has resulted in production facilities comparable to those anywhere in the world.

The U.S. cement industry, although capital and energy intensive, is not labor intensive.

High quality raw materials exist locally in the U.S., and are universally available.

II. THE INDUSTRY'S CHANGING DYNAMIC

In the midst of the strongest recovery in the post-war era, one would expect the U.S. cement industry to be enjoying a period of healthy production, employment, prices, and profits. To the contrary, in the face of an unprecedented flood of dumped imports, the U.S. industry is battling to remain profitable, and to keep production and employment onshore.

Since 1982, imports have increased from 4% to 17% of the U.S. consumption and imports through December of 1986 are 12% above 1985 figures. Currently, approximately 55% of the Florida cement market and 20% of the California cement market is met by imports. This sharp increase is accompanied by developments—the construction or acquisition of cement import terminals by foreign-owned cement brokers, and the acquisition of ready-mix dealers, silos and other local distribution facilities in the United States by foreign cement producers indicating that the importers and their foreign suppliers intend to be permanent factors in the United States market and that the market share erosion suffered by the domestic capacity available may be a long term loss.

Over the past five years, new entries have emerged as supply sources to the U.S. market. They are the Mediterranean countries, the Far East, and several Latin American nations. While operating at peak capacity, these foreign manufacturers easily meet domestic demand and then search for an avenue through which they are able to sell their surplus product. Due to a continued world-wide decrease in construction activity, a world surplus of cement has developed and few markets are available because local cement industries recently have been established in countries which traditionally imported cement—particularly Middle Eastern countries. The U.S. is a prime target for dumped and subsidized cement because these certain foreign producers are confident that our government will not take action against their unfairly traded imports.

For example, Korea has a new cement facility with an eight million ton per year capacity. This plant is located 125 miles from Japan, which has a 70 million ton annual market. Japan, however, does not permit the sale of Korean cement within its market. Therefore, the Koreans intend to dump their cement in the U.S., located thousands of miles away. Similar situations exist in other cement producing countries.

Several U.S. cement companies recently have begun to import cement not because they are unable to supply the market with their own product, but because they cannot compete with unfairly traded imports, imports which do not have a natural competitive advantage over the U.S. product.

III. FINANCIAL PERFORMANCE AND CAPITAL FORMATION

Cement manufacture is highly capital intensive. The cost of a modern cement plant of economical size is in the range of $110-$150 million. Approximately three dollars of capital investment are required to produce one dollar of annual sales.

During the next two decades the market prospects look extremely favorable for cement as a basic building material. However, with the large financial requirements for adoption of new technology, expansion of capacity, and installation of pollution control and energy conservation facilities, the cement industry faces a capital need substantially higher than its total net worth.

The domestic cement industry is a cyclical business which, primarily due to the negative effect caused by dumped and subsidized cement imports, is not fully experiencing the recovery that it must achieve if it is to survive the next cyclical downturn without serious damage and dislocation. Investment in new cement production facilities in the United States has virtually ceased, no steps are being taken to implement once-planned new plants, and layoffs are occurring, particularly at facilities located in border states.

Given its relative capital-intensity and the lack of sufficient return on investment to insure long-term existence, the U.S. cement industry has sought to remedy trade inequities within current law. However, our recent experience with anti-dumping petitions and a countervailing duty case has convinced us that, as interpreted by the Department of Commerce and the ITC, current U.S. trade law is inadequate to deal with the serious threat from the cement imports which faces the U.S. cement industry. In 1983, representatives of the U.S. cement industry filed a countervailing duty petition asking the Commerce Department to investigate the subsidies, including energy pricing subsidies, received by the Mexican cement industry, and to impose offsetting duties. In September 1983, the Commerce Department, following precedents it recently had set in cases involving Mexican ammonia and carbon black, declined to countervail against the basic Mexican fuel pricing subsidy. It is essential that the CVD statute be amended so that effective action against this unfair trade practice can be taken.

Last November, the Alliance brought the industry's case back before the ITC in the form of anti-dumping petitions served against eight countries: France, Greece, Spain, Japan, Korea, Venezuela, Colombia, and Mexico. These nations export and sell cement in the U.S. at a fraction of sales levels in their domestic markets. Dumping margins range from 45-180%!

Astounding, the Commission returned a negative determination at the preliminary level on December 10, 1986 by a margin of four to one. It never occurred to us that the Commission would determine that there is *no* reasonable indication or threat of "material injury" for the industry without availing itself of the full investigative process.

V. DISCUSSION

It is apparent to us that the Commission made two fundamental errors. First, it did not follow the statutory scheme for determining injury, which requires it first to consider the volume and trend of imports, next to consider the price of the imports, and only then to consider the effect of imports on such factors as sales, employment and profits. Instead, it considered whether the industry was healthy without regard to imports, and, finding incredibly that it was, never even considered whether imports were having an adverse effect on the industry.

Second, it gave excessive weight to current operating profits, as opposed to the long-term viability of the industry, as measured by factors such as the level of capital expenditures. It refused to consider whether imports were suppressing prices, and thereby rendering investment in U.S. productive facilities unprofitable.

Ironically, capital intensive industries like ours that are suffering severe dislocation from dumped imports may appear to the Commission to be "healthy." Unfairly traded imports may render investments in such industries uneconomic, either because investment funds become unavailable, or because even if such funds are available, investment in the industry is not likely to prove profitable because of the presence of unfairly traded imports. Industries that have stopped investing in modernized plant and equipment often have high operating profits from fully depreciated plant and equipment, thereby appearing profitable just at the point when they are becoming uncompetitive through lack of investment in modern plant and equipment.

However, the issue to be decided is not whether an industry is "heathy," as even a healthy industry may suffer material injury, but rather whether dumped or subsidized imports are having a materially adverse impact on that industry—whether imports are causing material injury. This is *clearly* the situation that confronts the cement industry today.

These sentiments were echoed by Commissioner Eckes, who offered a vigorous dissenting opinion consistent with his lone vote on the industry's behalf. Moreover, the Court of International Trade issued a concurrent opinion through its decision in *USX Corp*.v. *United States* on February 9, 1987. This case represented an appeal by USX of the ITC's final negative determination regarding Argentine carbon steel imports. The Court remanded the case to the Commission for further consideration (a hereto almost unprecedented occurrence) by citing the ITC's failure to consider the significance of a given volume of imports and through its recognition that "the mere fact that an industry has been lifted out of a recession can not automatically trigger the conclusion that foreign imports are not affecting the domestic market. The economic recovery of an industry can also be stymied by low-priced imports, which expand their share of the recovering market and create artifically low prices."

VI. CONCLUSION

The American Cement Trade Alliance adamantly opposes the ITC's narrow application of the injury test requirement which has been employed during its recent decisions. We urge the Subcommittee and the Congress to review the ITC's recent interpretations of the injury test, particularly for those anti-dumping and countervailing duty petitions involving industries producing commodity products.

The Alliance continues in its support of natural resource subsidy legislation. Having testified before the Subcommittee in May of 1985, ACTA's Chairman, Mr. Thomas E. Bronson, articulated the problems which Mexican fuel subsidies through PEMEX have created for the cement industry. A copy of Mr. Bronson's testimony is attached to this statement.

We have just made note of the plant closures, layoffs, loss of profits and lack of capital investments which are occurring within our domestic cement industry due to the impact of the increasing amount of dumped and subsidized cement imports. It is critical that Congress act now to help restore fair trade to U.S. cement markets before irreversible injury occurs to this industry.

[Attachment]

STATEMENT OF THOMAS E. BRONSON, PRESIDENT AND CHAIRMAN OF THE AMERICAN CEMENT TRADE ALLIANCE

I am Tommy Bronson, President and Chief Executive Officer of Moore McCormack Cement Company, headquartered in Tampa, Florida. Today, I am addressing you on behalf of the American Cement Trade Alliance (ACTA), a newly formed national trade association comprised of 20 cement companies in the United States representing almost 65% of U.S. clinker production capacity. I serve as President and Chairman of the Board of the Alliance which is located in Washington, D.C. I appreciate this opportunity to testify in support of the resource subsidy legislation and I applaud the Chairman's leadership in the effort to restore fair trade to U.S. cement markets.

I. INCREASE IN IMPORTS

The United States cement industry is being buffeted by an unprecedented penetration of its domestic markets by imported cement. Imports which have tripled since 1982, now represent 10% of the U.S. cement consumption. In 1984, 55% of the Florida cement market was imports. The sharp increase in imports is accompanied by developments—the construction or acquisition of cement import terminals by foreign-owned cement brokers, and the acquisition of ready-mix dealers, silos and other local distribution facilities in the United States by foreign cement producers—indicating that the importers and their foreign suppliers intend to be permanent factors in the United States market and that the market share erosion suffered by the domestic industry may be a long term loss.

Due to a continued world-wide decrease in construction activity, there is a world surplus of cement and few markets are available because local cement industries recently have been established in countries which traditionally imported cement—

particularly Middle East countries. The U.S. is a prime target for dumped and subsidized cement because foreign producers are confident that our government will not take any action against these unfairly traded imports. For example, Korea has a new 8 million ton cement plant located 125 miles from Japan which has a 70 million ton annual market. Japan, however, does not permit Korean cement to be sold there, so Korea intends to dump its cement in the U.S. which is located thousands of miles away. Similar situations exist in other cement producing countries.

II. INJURY TO U.S. CEMENT INDUSTRY CAUSED BY UNFAIR IMPORTS

Mexican cement and clinker shipments to the U.S. increased 140% in 1984, to a level that represents a 2,270% increase since 1981. These large increases occurred despite the fact that the U.S. domestic industry operated only at 65% of capacity in 1983 and 75% of capacity in 1984. The domestic cement industry is a cyclical business which, primarily due to the negative effect caused by subsidized and dumped cement imports, is not fully experiencing the recovery that it must achieve if it is to survive the next cyclical downturn without serious damage and dislocation. Indeed, in two areas particularly heavily hit by imports, Florida and Texas, domestic producers closed one plant and ceased integrated operations at another in 1984, despite local increases in consumption. Investment in new cement production facilities in the United States has virtually ceased, no steps are being taken to implement once-planned new plants, and layoffs are occurring, particularly at facilities located in border states.

Several U.S. cement companies recently have begun to import cement not because they are not able to supply the market with their own product, but they cannot compete with imports which receive a massive subsidy. These cement imports do not have a natural comparative advantage over the U.S. product but many of the imports are sold in the U.S. by being subsidized by their respective governments.

Our domestic cement industry is energy intensive with approximately 50% of the cost of production due to the cost of energy. During the 1970's energy crisis, a majority of the U.S. cement industry invested hundreds of millions of dollars modernizing its facilities and consequently, we operate some of the most efficient plants in the world. We have no fear of fair competition. But even with the most advanced technology, we cannot compete against cement imports produced with virtually no-cost, government-supplied energy. Such a massive energy subsidy is provided to Mexican cement producers. We need a remedy against imports which have a significant portion of their manufacturing cost subsidized by their government.

III. INADEQUACIES OF EXISTING U.S. TRADE LAWS

Our recent experience with an anti-dumping petition and countervailing duty case has convinced us that, as interpreted by the Department of Commerce and ITC, current U.S. trade law is inadequate to deal with the serious threat from the cement imports which faces the U.S. cement industry. In 1983, representatives of the U.S. cement industry filed a countervailing duty petition asking the Commerce Department to investigate the subsidies, including energy pricing subsidies, received by the Mexican cement industry, and to impose offsetting duties. In September 1983, the Commerce Department announced the imposition of countervailing duties on Mexican cement to offset preferential loans, preferential tax credits for plant and equipment investment, and a special depreciation allowance granted the Mexican cement industry. *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Portland Hydraulic Cement and Cement Clinker from Mexico,* 48 Fed. Reg. 43063 (1983). However, following precedents it recently had set in cases involving Mexican ammonia and carbon black, the Department declined to countervail against the basic Mexican fuel pricing subsidy. It is essential that the CVD statute be amended so that effective action against this unfair trade practice can be taken.

While we recognize the necessity for effectively competing with foreign producers, it never occurred to us that our government, while espousing the necessity for increasing international trade, would turn its back and ignore unfair subsidies such as the energy subsidy provided to the Mexican cement producers. This fact has made it impossible for us to compete and thus could render our investments worthless if the Mexican penetration of our markets continues at the current rate due to Mexican government subsidization of cement production.

Although it is not the subject of my testimony today, I also must note that we adamantly oppose the ITC's narrow application of the injury test requirement which has been employed during ITC's recent decisions. We urge Congress to review the ITC's recent interpretations of the injury test, particularly for those anti-dumping and countervailing duty petitions involving industries producing commodity products.

IV. MEXICAN ENERGY SUBSIDY DISTORTS U.S. TRADE

We believe that the Mexican fuel subsidies are, in effect, an export subsidy and a domestic production subsidy which are contrary to the spirit of current U.S. trade law and the GATT. In discussing this statement, I first want to emphasize the sheer size of the Mexican energy subsidy. The Mexican government-owned oil company, PEMEX, operates a 2-tier pricing system for energy and sells heavy fuel oil to domestic cement and other manufacturers for the equivalent of approximately $5 per barrel. The same oil is sold for export by PEMEX at approximately $25-$30 per barrel. The domestic price is not available to U.S. manufacturers. The overall benefit of this natural resource subsidy to Mexican cement producers is approximately $20 per ton. The average U.S. price realization is approximately $53 per ton. This tremendous artificial advantage created by Mexico's fuel price subsidy enables Mexican industries to enter markets in which they could not ordinarily compete. For example, markets for cement normally are regional, since transportation over long distances (more than 200 miles over land) is comparatively expensive. However, the cost advantage provided by the fuel subsidy enables Mexican cement companies to absorb higher transportation costs than would be acceptable to a cement company purchasing energy at market prices. Indeed, the Mexican company that produces most of the cement exported from Mexico to Florida is located near Tampico, which is hundreds of miles away from Florida.

Mr. Chairman, what I am saying is that this problem is not limited to the Southwest. It is not limited to Florida. With their artificial cost advantage, Mexican companies can push their subsidized cement into any of our coastal states, up the Mississippi River, and even into the Great Lakes. And based on our experience in Florida—a four thousand five hundred percent increase of Mexican cement imports since 1982—I believe that the Mexicans will go after some or all of those markets unless this country and this Congress decide that American industry should not be the victim of this type of subsidy program.

The Mexican National Industrial Development Plan (NIDP) "adopts as an explicit policy the principle of maintaining, at a lower level than the international one, the domestic price of industrially-used energy sources and basic petrochemicals." The plan states that this policy is connected with, among other objectives, "the promotion of exports and the efficient substitution of imports." *Industrial Development Plan, 1979-1982-1990* (Abridged English Version) at 54.

The NIDP expressly states that:

> [The Mexican Government's] explicit policy of maintaining internal prices of energy sources for industrial use below that of the international market . . . allows for the strengthening of industry by giving it a substantial margin of protection via inputs. In contrast to other forms of protection which tend to make such costs more expensive and access to external markets more difficult, this mechanism *constitutes a direct incentive to exports.* (Emphasis added).

NIDP at 30 (translation).

In 1976, the Mexican cement industry entered into a Coordination of Action Agreement with the Government of Mexico, under which the industry agreed to guarantee national and regional cement supply in the 1977-1982 period and to generate a surplus for a substantial increase in cement exports. An even more ambitious Development Program for the Cement Industry was formulated jointly by the Government of Mexico and the industry in 1980 which called for increasing the annual production of cement by 15.3 million tons (from an annual total of about 19.9 million tons to 35.2 million tons) over the period 1980-1983—a 77 percent increase in capacity in four years. In 1983, the Mexican cement industry had an excess capacity of over 16 million tons of cement, and the U.S. is the primary export market for its surplus cement.

One of the goals of the Mexican government's 2-tier energy pricing policy—to stimulate exports—certainly is being realized. Another goal of this fuel pricing policy—to preclude imports—also is being accomplished because the Mexican cement producers enjoy the lower price effect from the fuel subsidy. Mexico also imposes a 10% duty on imported cement in addition to requiring a government permit which is close to impossible to receive. As a consequence, there are virtually no exports of U.S. cement to Mexico.

Thus, this massive energy subsidy serves as an export subsidy, as well as a domestic production subsidy. Such subsidies violate fair trading practices and should not be permitted. Since the Department of Commerce has been allowing these unfair trade practices to continue despite protests from the injured industries, Congress needs to change the law to make it clear beyond any doubt, that such subsidies are to be contervailed.

V. ANALYSIS OF OPPONENT'S ARGUMENTS

I would now like to discuss some of the points presented by the opponents to the natural resource subsidy legislation. Previously, there have been claims that similar legislation approved by the House last year was a violation of GATT. Richard R. Rivers, former General Counsel of the Office of Special Trade Representative and head of the team that negotiated the Subsidies Code on behalf of the United States in 1979, testified at the Trade Subcommittee hearing on October 20, 1983, that:

> Accordingly, in my opinion there is nothing in the GATT or the Subsidies Code that would preclude the United States from recognizing that a two-tiered energy pricing system can constitute a form of subsidization and from using any reasonable basis for measuring that subsidization.

At the same hearing, when Claude Gingrich, testifying on behalf of USTR, was asked if the natural resource subsidy provision contained in H.R. 4784 was a violation of the Subsidies Code which interprets the GATT, he replied "Specifically, no. It is not a violation." *Proposed Amendments to the Countervailing Duty Law: Hearing Before the Subcommittee on Trade of the House Committee on Ways and Means,* 98th Cong., 1st Sess. 109 (1983)

Arguments also have been made that if other countries enacted mirror legislation, U.S. products which may benefit from natural gas controls, would be potential targets for foreign countervailing duties. This position reflects fundamental misunderstandings of the proposed legislation and of U.S. natural gas pricing. The resource input subsidy would apply only when the price of a natural resource product such as natural gas is manipulated by a government to be lower than the export price or fair market value of the resource. Price regulation would not give rise to a potentially countervailable subsidy so long as it did not function to artificially lower prices below fair market value.

The United States' Natural Gas Policy Act ("NGPA") currently does not function in that fashion and it is not expected to do so for the foreseeable future. In spite of the continued increase in NGPA ceilings, the average wellhead price of gas has tended to decline since early 1983 and approximates a market determined price. It therefore appears that in the United States, in spite of the existence of residual controls on some categories of gas under the NGPA, market forces are the primary determinant of gas sales prices to industrial users. As Energy Information Administrator Erick Evered stated recently, "we are now into an era of natural-gas netback pricing," in which gas prices are being and will continue to be dictated by competition with oil for the large industrial and electric-utility market rather than by regulation. U.S. Energy Information Administration, *Annual Energy Outlook 1983* (1984); *Inside F.E.R.C.,* 8 (June 4, 1984). In these circumstances, there is no countervailable subsidy under the proposed provision.

Opponents have raised objections to previous legislation of this type claiming that since the Mexican fuel subsidy is generally available to all industries, it is not countervailable. This "general availability" argument fails to recognize that the effect of the subsidy is to confer a preferential grant to those particular industries that either use petroleum products as a basic feedstock or a manufacturing process requiring large amounts of energy relative to other constituents.

Significant benefits of the Mexican fuel pricing policy are received by specific industries. The effect of the fuel subsidy is to stimulate energy intensive industries with the express purpose of encouraging exports. The Mexican government in its NIDP explicitly states its two-tier fuel pricing policy "constitutes a direct incentive to exports" (NIDP at 30). Thus, Mexico's fuel subsidy has the intent and effect of being an export subsidy which allows Meixcan cement imports to distort trade in the U.S. Such a subsidy is a violation of fair trade which the U.S. should not tolerate.

VI. REVIEW OF H.R. 2451 AND H.R. 2345

We understand that the Subcommittee is considering two bills, H.R. 2451 and H.R. 2345, which address the problem of natural resource subsidies. We think the two versions share a common goal and can be reconciled. One strong objection which we have to H.R. 2345 is its inclusion of cost of production as a factor to be considered in determining the amount of the subsidy. The cost of production is irrelevant in determining the amount of a subsidy and it is not generally a factor considered in other trade law. We think that the export price, in the exporting country, subject to the qualifications listed in H.R. 4784 as passed by the House last year, is the best available objective measure of the market value of the input product and, when present, should be the principal basis for determining fair market value.

VII. CONCLUSION

On April 23, 1985, the U.S. signed a bilateral trade agreement with Mexico in which Mexico "agrees to seek to avoid causing, through the use of any subsidies, injury to the (U.S.) domestic industry." Mr. Chairman, I have just testified about the plant closures, layoffs, loss of profits and lack of capital investments which are occurring within our domestic cement industry due to the impact of the increasing imports of subsidized cement from Mexico. It is critical that Congress act now to help restore fair trade to U.S. cement markets before irreversible injury occurs to this industry.

American Farm Bureau Federation

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FEB 23

February 20, 1987

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SUBCOMMITTEE ON TRADE

The Honorable Sam M. Gibbons
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The American Farm Bureau Federation, the nation's largest general farm organization with over 3.5 million member families, appreciates the opportunity to present its views on proposed trade legislation.

American farmers have a tradition of strong support for an open world trading system. International trade is of vital importance to the well-being of our sector, and the growing interference in the free market system by governments is, therefore, of great concern to U.S. farmers. We can compete with farmers in other countries, and are willing to do so. We are not willing to compete against foreign governments, too.

Few would deny that there are problems in the world trading system. U.S. agriculture has felt the repercussions of some of these problems. We have seen weak, ineffective and confusing GATT rules on export subsidies permit the European Community to increase dramatically its net exports of many farm commodities in recent years. Japan and other countries employ import quotas and quantitative restrictions to limit foreign competition in their markets. There are no international rules at all to govern certain trade practices such as variable import levies. Farm Bureau believes the solutions to these sorts of problems lie in finding ways to reduce such government intervention in trade.

It is a constant and often uphill battle just to maintain the status quo in market access opportunities. The U.S.-EC dispute resulting from the accession of Spain and Portugal to the Community is a classic example. The new EC proposal to tax vegetable oils, including soybean oil, is another. To act to reduce trade restrictions and open new markets requires even stronger political commitments on the part of major trading countries. Such political commitments are traditionally only generated in the context of multilateral trade negotiations.

Farm Bureau supports the development of trade legislation in the U.S. as an opportunity to help fight the built-in protectionist momentum and to provide the political commitment for a new round of multilateral trade negotiations.

A great deal of fanfare has surrounded the issue of U.S. competitiveness in world markets. We doubt that everyone has in mind the same thing when they use the term "competitiveness."

In some cases, the U.S. may not be competitive with foreign producers because of unfair foreign government intervention. In some cases it may be because of the adverse dollar exchange rate in recent years. In other cases it may be because of poor management decisions, higher labor costs or excessive government regulation. Whatever the case, Farm Bureau believes the solution is to eliminate the causes of the failure to compete. The solution is not to mandate legislatively increased competitiveness through new import restrictions. In the long run, government induced "competitiveness" simply camouflages and perpetuates domestic inefficiencies.

American agriculture has had a great deal of experience with the competitiveness problem. We have lost competitiveness in recent years for a number of the same reasons mentioned above--foreign unfair trade practices, the strong dollar in the early 1980's, and excessive U.S. government intervention in our principal farm export commodities. By far the biggest problem for U.S. farm exports in recent years was our own government price support programs which did not allow U.S. export prices to respond to world market conditions and which stimulated production and exports by foreign competitors.

Farm Bureau believes that the Food Security Act of 1985 has put us on the right track to regain that lost competitiveness. We recognize that we will not regain all of our lost export markets overnight. However, U.S. trade legislation should support, not hinder, the process of regaining our competitiveness.

The Ways and Means Committee may hear arguments that U.S. agriculture should also seek protection from imports, since our farm trade surplus has declined in recent years and "we are becoming dependent on foreign food." Farm Bureau does not hold such a view. Our trade surplus has unfortunately declined from $27 billion to $5 billion over the past five years. This $22 billion reduction, however, is largely due to reduced exports which have fallen by around $18 billion. Agricultural imports have grown by $4 billion over the same period, but half of that growth was in noncompetitive products such as coffee, tea, cocoa and spices, with which we logically have no complaint. The U.S. is not becoming dependent on foreign food. The port value of competitive imports was around $9 billion in fiscal 1986. Even if that value were, say, $18 billion at the retail level, these imports would still only represent about 5 percent of the total domestic expenditures on food.

Nevertheless, Farm Bureau will continue to oppose imports of products that compete unfairly in our market. Dumped or subsidized goods should be met with compensatory import restrictions to prevent injury to domestic producers. Our trade laws need to be improved to deal with such unfair imports in a quicker and more effective manner.

Farm Bureau believes any trade bill should embrace the following general goals: First, to reiterate, it should be export oriented rather than import protectionist. It should aim at getting our own house in order in terms of removing existing barriers to U.S. competitiveness. It should strengthen our ability to respond to specific foreign unfair trade practices by making the trade complaint process quicker, less costly to domestic producers and by reducing foreign policy influence over legitimate trade concerns. It should promote market-oriented foreign economic development and address the problem of the enormous foreign debt burden in the countries that represent potential growth markets for the U.S.. Lastly, it should not contain specific commodity or bilateral import restrictions that would result in retaliation against U.S. exports, particularly of agricultural products.

In addition to these general objectives, Farm Bureau supports the following specific provisions of a trade bill:

(1) Deadlines in Section 301 (unfair trade) cases to prevent them from lasting several years due to foreign country foot-dragging.

(2) Changes in regulations defining the domestic industry in trade complaints to give producers of raw products legal standing in cases involving imports of processed products.

(3) Fast-track provisions under U.S. safeguard laws, consistent with our international obligations, to allow quick relief from injurious imports during a short U.S. marketing season for perishable commodities.

(4) Country-of-origin labeling for agricultural products at the retail level. Consumers currently have the right to know where nearly all retail products originated, with the exception of food products that are imported in bulk and then re-packaged or processed.

(5) Authority to the President to enter into trade negotiations for the purpose of, among other things, eliminating foreign unfair trade practices, improving GATT rules in agriculture, especially with regard to export subsidies, and improving the dispute settlement procedures. The Administration should not be given authority to swap increases, as opposed to reductions, in import restrictions with other countries.

(6) Permanent authority to use export subsidies to regain markets lost to foreign subsidized competition.

(7) Expanded use of P.L. 480 to permit the United States to continue to provide food assistance to needy countries and utilize our surplus commodity stocks.

(8) Aggressive agricultural market development programs utilizing sales missions, export credits, interest buydowns, innovative barter programs, use of Export-Import Bank financing and expanded funding for market developing programs.

Farm Bureau requests that the Ways and Means Committee take these views and concerns into account in developing trade legislation that could determine the course of world trade for years to come.

Sincerely,

Dean Kleckner
Dean Kleckner
President

Testimony of James K. Coyne
President, American Tort Reform Association

Public Hearing on Comprehensive Trade Legislation
Before
House Ways and Means Committee
Subcommittee on Trade

February 27, 1987

Mr. Chairman and members of the distinguished Subcommittee on Trade, my name is James Coyne. I am President of the American Tort Reform Association (ATRA).

ATRA is a broad based coalition of organizations representing some 30 million large and small businesses, professionals, consumers, and Americans from all walks of life. ATRA is solely committed to the enactment of needed tort reforms. Our effort to reform the civil justice system will have a profound effect on America's competitiveness.

ATRA's 400 member organizations, ranging from groups as diverse as the General Aviation Manufacturers Association and the National Glass Association, join those of you here today in expressing grave concerns about America's trade deficit.

It is clear we are falling behind and one of the major causes of that fall is increased liability exposure. Our civil justice system is out of balance. For manufacturers, the costs associated with increased liability exposure are becoming a major component in the price of their products with adverse consequences for competitiveness, innovation, and employment. Some products may soon be unavailable at any price.

U.S. product liability laws place American manufacturers at a competitive disadvantage in the international marketplace.

o As indicated in an April 21, 1982 paper entitled "Product Liability and Tort Reform," published by the National Legal Center for the Public Interest, American manufacturers and sellers pay product liability insurance rates that are 20 times higher than rates in Europe, placing American firms at a competitive disadvantage in both foreign and domestic markets.

o Under product liability law today in the majority of states, American manufacturers are potentially responsible for harm caused by their older products for as long as they remain in use. This long tail concept can make manufacturers bear 30 years of potential liability! The General Aviation Manufacturers tell us that for small light aircraft, product liability costs constitute over 7% of the industry costs, the largest single cost of the industry.

o The product liability situation also is impeding the development and manufacture of new aircraft, particularly smaller aircraft, and no new training aircraft are now being produced in the United States.

Liability concerns stifle innovation and product improvements.

o According to the American Recreation Coalition, a totally new ignition product, which would have significantly improved performance and maintenance expenses on today's piston aircraft engines, was dropped because the manufacturer believed that is production would lead to increased product liability exposure in an increasingly hostile litigation climate.

o The current product liability situation is adversely impacting the development and application of new technologies.

o Our members tell us they cannot pursue the production of improved technologies because of liability risks and find their organizations pulling back from research opportunities.

This is not the America we all know. New frontiers have been our strength. We must return control to a civil justice system that is currently rewarding foreign competitors while America's businesses pay larger and larger punitive damage awards!

Punitive damages have never been intended to compensate the plaintiff, but rather to punish and deter a defendant who acted with conscious and deliberate disregard of the interest of others such that his conduct may be called willful or wanton. Today's expansion of punitive damage awards is forcing America's businesses into bankruptcy!

America must return to a fault-based legal system. In recent years some judges have moved away from this concept and endorsed absolute liability, holding America's manufacturers liable for any injury related to their activity regardless of the foreseeability or preventability of the injury and regardless of whether the injury might reasonably have been avoided by the injured person. The tendency of our courts to disregard fault in imposing liability on businesses, not only threatens the financial viability of our industries but opens the door to our foreign competitors.

As members of this Committee you have a responsibility to take action to bring America back competitively. As members of the U.S. Congress you have a responsibility to your constituents to return balance to our civil justice system! America's businesses can compete, but they must be given a fair playing field on which to do so!

STATEMENT ON BEHALF OF AMERICAN WIRE PRODUCERS ASSOCIATION

BY ROBERT T. CHANCLER, MANAGING DIRECTOR

HEARINGS ON COMPREHENSIVE TRADE LEGISLATION
BEFORE THE SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES

March 6, 1987

The American Wire Producers Association is a national trade organization which represents independent American-owned and -operated manufacturers of carbon, alloy and stainless steel wire and wire products. Our membership also includes integrated and mini-mill producers of steel wire rod, wire drawers related to domestic rod producers, wire drawers related to foreign steel companies, and suppliers of machinery and other equipment to our industry. Member companies of the Association operate more than 110 plants in 27 states, and they employ 20,000 American workers. Our members are efficient producers with modern facilities and a productive labor force. They supply approximately 60 percent of the domestic market for steel wire and wire products, including round and flat wire, barbed wire, threaded bars, welded wire fabric, wire rope and strand, nails, staples, chain, coat hangers, concrete reinforcing mesh, and chain link fence.

The international steel market is a highly competitive environment, and our members compete effectively with overseas producers of wire and wire products. We have in the past opposed artificial government-imposed restrictions on the free and fair exchange of steel products across international boundaries. However, in September 1984, President Reagan announced the establishment of a government policy for the steel industry which included as its centerpiece the negotiation of voluntary restraint arrangements (VRA's) with steel-exporting countries. Moreover, many foreign producers and their governments continue to abuse the international trading system through unfair pricing practices and subsidization. Thus, our Association respectfully urges this Subcommittee to correct the deficiencies in the President's Steel Import Program and to prohibit the continuation of certain unfair practices by our trading partners.

There can be no question that the omission of certain major steel-exporting countries from VRA coverage -- particularly Canada, Turkey, Taiwan, Sweden and Argentina -- has undermined the integrity and effectiveness of the President's Steel Import Program. At the inception of this program in the fall of 1984, the United States Trade Representative observed that the domestic steel industry confronted an "unprecedented and unacceptable" surge of imported steel products as the result of (a) the diversion of steel products to the United States market due to quotas and import restraints in other countries and (b) massive unfair trade practices by overseas producers, including predatory pricing and subsidization. Accordingly, the President instructed the Trade Representative to negotiate VRA's with countries whose exports of steel products had increased significantly to the detriment of the national economy. The President also directed the Trade Representative to negotiate additional VRA's to control new surges in imports resulting from subsidization, dumping, or other unfair or restrictive practices.

While steel imports from VRA countries have generally declined since 1984, imports of steel and steel products from non-VRA countries have increased sharply. Exporters from many non-VRA countries have exploited the President's Program by capturing market share relinquished by VRA countries and by expanding the range and volume of their steel shipments to the United States. Many of these countries are also subject to final dumping and/or countervailing duty orders on steel products, clear evidence of their willingness to engage in unfair trade practices in order to establish or expand their share of the U.S. market.

For example, Canada exported 3,203,000 net tons of basic steel mill products to the United States during 1986, an increase of 11.7 percent over the previous year. Steel shipments from Taiwan surged 120.1 percent during the same period -- from 219,000 net tons to 482,000 net tons. Turkey exported 44,000 net tons of steel products to the United States in 1984, 70,000 net tons in 1985, and 153,000 net tons in 1986. Altogether, imports of steel mill products from non-VRA countries increased by 12.8 percent from 1985 to 1986, whereas imports from VRA countries declined by 21.1 percent during the same period.

The exploitation of the President's Steel Import Program by non-VRA countries has been even more pronounced in the categories of steel wire and wire products. Canadian shipments of drawn wire surged by 18.6 percent from 177,000 net tons during 1985 to 210,000 net tons during 1986. At the same time, Canadian exports of nails to the United States increased by 24.1 percent from 83,000 net tons to 103,000 net tons. The surge of imports of wire and wire products has been even more extreme in the western region of the United States where imports of drawn wire, nails and wire products have risen by 60.1 percent from 1985 to 1986 and by 106.0 percent from 1984 to 1986.

Turkey and Taiwan are other examples of countries which have exploited their non-VRA status. Turkish shipments of nails surged from 1,000 net tons during 1985 to 23,000 net tons during 1986 -- a staggering increase of more than 2,200 percent. At the same time, Taiwan increased its exports of drawn wire by 60.7 percent and of nails by 349.3 percent. While Sweden and Argentina have recently moderated their steel exports to the United States, both countries remain significant suppliers, and Sweden continues to ship large quantities of wire, particularly high-value stainless steel wire, to the United States.

Clearly, the President's Steel Import Program was not designed merely to shift market share from one foreign producer to another. Accordingly, we urge the Subcommittee to adopt legislation which would close these loopholes in the President's Program.

We have prepared a proposal, attached as Exhibit A, which would complete the implementation of the President's Steel Import Program by eliminating the distortions caused by the omission of certain steel-exporting countries. Our proposal covers the major non-VRA countries which export more than 100,000 net tons of steel and steel products to the United States annually. This threshold figure avoids the administrative burden of negotiating VRA's with small or marginal steel-exporting countries whose shipments nevertheless remain subject to existing unfair trade laws. Moreover, Section 177 of the Trade and International Economic Policy Reform Act of 1987 (H.R. 3) would prevent the exploitation of the President's Program by such countries. Finally, the proposal extends only to those non-VRA countries which have already engaged in unfair trade or pricing practices through subsidizing and/or dumping steel imports in the U.S. market. Because the practices of these countries are no less damaging than those of the VRA countries, there is no justification for rewarding them with a greater share of the U.S. market at the expense of the domestic industry.

As noted above, our Association strongly supports measures to prevent the diversion of steel products from VRA countries to non-VRA countries where the products are further processed and re-exported to the United States. This problem has reached crisis proportions with respect to imports of wire and wire products from Canada. As Exhibits B and C demonstrate, following the adoption of the President's Steel Import Program, western Canadian wire producers have imported sharply increasing quantities of wire rod from VRA countries for conversion into wire and wire products which are subsequently exported to the United States. From 1984 to 1986, western Canadian imports of wire rod from VRA sources increased by 47.7 percent from 132,000 net tons to a projected annual total of 195,000 net tons. At the same time exports of wire and wire products from western Canada into the western region of the United States increased by 106.0 percent. Thus, Canada has become a major conduit for the conversion of VRA steel into products for re-exportation into the United States.

Our Association endorses Section 177 of H.R. 3 which would prevent such diversion of VRA-origin steel into the United States via non-VRA processors. We believe that enactment of this provision is essential in order to prevent further undermining of the President's Program and further distortions in the domestic steel market.

Finally, the Association endorses Section 136 of H.R. 3 which would provide some relief to the domestic industry from the invidious practice of "diversionary dumping". Prior to the initiation of the President's Steel Import Program, imports of steel wire rod from virtually every major exporting country were subject to antidumping and/or countervailing duty proceedings. It is our experience that, following the imposition of dumping or countervailing duties against wire rod, overseas producers shift their production into our market of wire and wire products, using the dumped or subsidized rod as the basic raw material. Our industry needs Section 136 in order to prevent the "downstreaming" of dumped wire rod into dumped wire and wire products.

The members of our Association have a record of competing successfully in the international marketplace. Our segment of the domestic steel industry has grown to service 60 percent of America's demand for steel wire and wire products. We are confident that we can continue to compete effectively in a free and fair trading environment. By enacting legislation which would close the loopholes in the President's Steel Import Program and provide relief from the practice of diversionary dumping, the Congress can restore the basic conditions in which competitive producers can prosper by offering freely and fairly traded goods to the marketplace.

Respectfully submitted,

Robert T. Chancler
Managing Director
American Wire Producers Association
1101 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20036

EXHIBIT A

A BILL

To amend the Steel Import Stabilization Act to eliminate distortions of trade caused by the omission of certain steel-exporting countries from the President's steel import program.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

That Section 805 of the Steel Import Stabilization Act (Public Law 98-573) is amended as follows:

(1) By redesignating subsection (c) as subsection (d); and

(2) By inserting after subsection (b) the following new subsection:

"(c)(1) The United States Trade Representative shall consult with the government of each of certain steel-exporting countries as defined in paragraph (2) of this subsection for the purpose of negotiating a bilateral arrangement as defined in Section 804(1). If such consultations do not result in the successful negotiation of an arrangement within ninety (90) days of the date of enactment of this subsection, the Secretary of the Treasury, in exercising his authority under subsection (d) of this section, shall restrict entry into the United States of the categories of steel products, as defined in paragraph (3) of this subsection, from such country, beginning in calender year 1987, to no more than seventy (70) percent of the percentages of apparent domestic supply in each category achieved by steel products imported from such country in the four calendar quarters immediately preceding October 1, 1984.

"(2) The certain steel-exporting countries referred to in paragraph (1) include any country which (a) exported, directly or indirectly, 100,000 net tons or more of the categories of steel products defined in paragraph (3) of this subsection during calendar year 1986 or any subsequent calendar year, and (b) is subject to an antidumping and/or countervailing duty order against one or more of the categories of steel products defined in paragraph (3) of this subsection.

"(3) The categories of steel products referred to in paragraphs (1) and (2) are the same categories of steel products enumerated in and governed by the Arrangement Concerning Trade in Certain Steel Products between the European Economic Community and the Government of the United States, as amended, and the Arrangement Concerning Exports of Pipes and Tubes between the European Economic Community and the Government of the United States, as amended.

"(4) The duration of any bilateral arrangement or other restriction pursuant to paragraph (1) of this subsection shall be the same as that of the bilateral arrangements which have already been entered into pursuant to the President's steel import program.

EXHIBIT B

WESTERN CANADA
EXPORTS OF WIRE AND WIRE PRODUCTS TO THE UNITED STATES THROUGH THE PORT OF BLAINE, WASHINGTON

Product	1983	1984	1985	Jan-Oct 1986
Drawn Wire	14,460	25,378	23,646	24,441
Nails	12,949	9,761	20,628	32,452
Barbed Wire	42	49	44	37
Galvanized Wire Fence	132	496	406	492
Wire Strand	2,073	2,305	2,898	4,713
Welded Fabric	561	2,427	4,389	7,241
TOTAL	30,217	40,416	52,011	69,376

Note: All figures in net tons.

Source: U.S. Department of Commerce

EXHIBIT C

WESTERN CANADA
IMPORTS OF STEEL WIRE ROD

Imports in Metric Tonnes

VRA Countries	1983	1984	1985	Jan-Oct 1986
Australia	2,169	--	--	--
Belgium	1,070	--	--	--
Brazil	32,007	32,492	15,406	31,694
Czechoslovakia	--	--	--	2,228
France	10,640	19,036	34,099	31,423
Korea	1,110	--	2,754	2,685
Japan	44,749	33,706	39,545	34,844

VRA Countries	1983	1984	1985	1986
Mexico	5,638	17,835	3,534	13,864
Spain	--	11,013	22,345	28,654
Venezuela	3,068	5,507	5,739	1,668
West Germany	--	--	8,696	83
Subtotal	100,451	119,589	132,118	147,143
Subtotal (net tons)	110,727	131,823	145,634	162,196
Non-VRA Countries				
Argentina	1,199	5,292	--	--
Singapore	--	--	3,407	--
Trinidad & Tobago	--	--	--	16,809
U.S.A.	461	1,777	1,512	418
Subtotal	1,660	7,069	4,919	17,227
Subtotal (net tons)	1,830	7,792	5,422	18,989
TOTAL	102,111	126,658	137,037	164,370
TOTAL (net tons)	112,557	139,615	151,056	181,185

Note: There are U.S. antidumping and/or countervailing duty orders against wire rod from Argentina and Trinidad and Tobago.

Source: Canadian Import Statistics

Written Submission
to the
House Ways and Means Committee
on implications for Latin America
# of Trade Issues Raised by H.R. 3

by

Thomas L. Hughes
President

Association of American
Chambers of Commerce in Latin America

INTRODUCTION

The Association of American Chambers of Commerce in Latin America (AACCLA) is pleased to have the opportunity to make this written submission on the omnibus trade legislation now before Congress. We have looked most carefully at H.R. 3, and believe this to be a highly laudable effort to deal with our disappointing trade performance. With a number of changes and deletions, some which have already been agreed to by Chairman Rostenkowski and subcommittee chairman Mr. Gibbons, we believe that this legislation will be constructive trade policy reform capable of having a long-term positive impact on our international competitiveness. This statement explains the concerns of AACCLA with the legislation as it was introduced in the 100th Congress.

Since 1967 AACCLA has acted as a clearinghouse for information and as a coordinator for programs of common interest to the twenty-one American Chambers of Commerce (AmChams) located in this hemisphere. Representing the American business community in their respective countries, the country Chambers collectively represent 18,000 individuals and companies engaged in expanding trade and investment between the U.S. and Latin America. They also serve their local communities by being a window to American ideas and business practices.

AACCLA's Board of Directors believes that the Legislative and Executive branches of the U.S. Government, in formulating and implementing legislation affecting international trade and investment, should take into account the special commercial relationships between the private sector of United States and the private sectors of Latin American nations. Both branches should also consider the importance to the United States of sharing this hemisphere with friendly, prosperous and democratic governments, and the desirability of assisting the Latin American countries in their efforts to service their external debts.

WHY IT IS AGAINST U.S. INTERESTS TO LIMIT ACCESS FOR LATIN AMERICAN EXPORTS

As Americans, we are anticipating that the Latin American countries will continue to reform their economic policies, adopt measures of austerity and faithfully meet their international debt obligations. On the other hand, the Latin Americans are anticipating that the United States will avoid restrictions on their exports to our market. Progress has been made in coping with the burden of debt, but the problem remains. The best assurance of continued progress is continued economic growth and expanded export earnings for the countries concerned.

One of the effects of the debt crisis has been the agreement of many Latin American countries to undertake economic adjustment programs designed to improve foreign exchange earnings. Evidence of the success of these programs comes from the trade performance of Latin American countries in 1986. Last year, Latin America achieved an estimated $16.1 billion surplus in its global trade. This was achieved through an increase in nontraditional exports and a continued moderation in import demand. On the negative side, this surplus was less than that recorded in 1985 and in fact, toward the end of the year, the surplus was rapidly declining. For example, Brazil had a $12.5 billion surplus in 1985, which declined to $9.5 billion in 1986. The surplus declined from over $1 billion a month in the first three quarters of 1986, to an average of $166 million per month in the last quarter of 1986. The surplus for January, 1987 was only $129 million, the smallest surplus since March, 1983.

Of greater importance is the fact that United States imports from the region declined in 1986. The United States is the principal market for Latin American exports, accounting for 54 percent of the $80.3 billion exported from the region in 1986. But imports from Latin America decreased by 12 percent in 1986, compared to an increase of 7 percent in imports from the rest of the world.

The outlook for Latin American trade in 1987 is mixed. The recent small increase in petroleum prices assisted countries like Mexico, Venezuela, Ecuador and Peru, but it is unclear whether this increase will stick. On the other hand, increased petroleum prices hurt consuming countries like Brazil and most of the Caribbean Basin states. Rising coffee prices have helped some but increasingly restrictive U.S. sugar quotas have had a most deleterious effect. It remains clear that Latin American countries have not been particularly successful in getting away from reliance on a few basic commodities for the bulk of their export earnings and that access to the U.S. market is crucial to their ability to meet their international debt obligations and to promote economic development.

There is a selfish reason for supporting liberal access for Latin American exports to the American market. Their propensity to import more goods and services from the United States than from most other regions. The increased export earnings of Latin American countries are more likely to result in increased imports from the U.S. than from other global sources.

To illustrate, while total 1986 Latin American imports increased by one percent, imports from the United States increased by four percent, reaching a total of $30.4 billion, 47 percent of total imports into the region. Latin America now takes 14 percent of all U.S. exports. Incidentally, this increase in U.S. exports to Latin America took place in a year in which U.S. exports to the rest of the world increased by only about two percent.

A third reason to support liberal market access is that Latin America's progress toward social justice, democratic institutions and political stability is in severe jeopardy in the absence of sustained economic growth. It is clear from events since World War II that there is a strong correlation between export expansion and economic growth. Denying Latin American exports access to the U.S. market is to deny this region a chance to achieve desperately needed economic growth.

U.S. IS TAKING CONSTRUCTIVE STEPS TO REDUCE ITS GLOBAL TRADE DEFICIT

On the other hand, AACCLA shares the concern of this Committee with the extraordinarily large current account deficit being recorded by the United States. It is our view that this situation reflects a series of macroeconomic factors and is not due to specific trade policy defects or shortcomings.

In this regard, AACCLA believes that steps taken by the Congress and the Administration to reduce the Federal budget deficit, particularly by careful review of spending priorities, will soon be reflected in an improved trade picture. It is our hope as well that reduction of the Government's need to borrow will contribute to more readily available capital for private sector investment and thus to improved U.S. productivity. Without commenting on specific measures, we would like to stress that in our judgement these efforts must continue.

As a consequence of the concerted action of the U.S. and its principal economic partners, the value of the U.S. dollar in terms of major currencies has declined. Owing to normal lags involved in trade transactions and the continuing fall in the value of the dollar, it will be some months before the impact of the dollar devaluation is reflected in the trade balance figures. However, we believe that we are beginning to turn the corner and accept the Administration estimate that this year will see a $20-30 billion turnaround in the U.S. trade deficit.

U.S. POLICY ON FOREIGN INVESTMENT BARRIERS

AACCLA would like to go on record in support of the President's international investment policy. The principle that American investors abroad should receive the same fair and nondiscriminatory treatment that foreign investors find in the United States is a basic tenet of our Association.

We support liberalization of trade-related investment barriers in developing countries. AACCLA members are concerned over export performance and local content requirements, mandatory local ownership requirements and other burdensome policies, but believe that negotiations to overcome these should be carried out on a multilateral and bilateral basis, with careful consideration given to the potential impact of such negotiations on the interests of U.S.-owned or affiliated companies already operating in or considering entering the country in question. AACCLA does not see the need for further specific legislation on foreign investment barriers at this time, but will continue to watch closely the impact of Administration implementation of its policy.

AACCLA'S TRADE PRINCIPLES

In the trade area, AACCLA's position on new legislation is as follows:

1. Provide full authority to the President to enter into negotiations to improve the multilateral trading system by expanding the scope of the GATT, improving the MTN Codes of Conduct, and restoring confidence in the GATT consultation and dispute settlement procedures.
2. Do not broaden the authority for unilateral action where such action would violate specific provisions of existing international agreements or contravene their purposes and objectives.
3. Preserve the fundamental distinction between laws which provide import relief from "fairly" traded imports and those laws designed to remedy "unfair" trade practices. The term "unfair" should be reserved only for those actions which are inconsistent with internationally agreed upon standards.
4. Oppose measures which diminish the President's decision-making and discretionary authority where this authority ensures that specific firm or industry interests are reconciled with the national economic interest, or enables the President to negotiate the opening of foreign markets to U.S. goods, services and investment.
5. Support proposals which increase the certainty, transparency and fairness of our trade laws and regulations.
6. Defend the principle of most-favored-nation treatment and nondiscrimination as the foundation of world trade while allowing deviations required to deal with the special problems.

AACCLA SUPPORTS TOKYO ROUND TYPE NEGOTIATING AUTHORITY FOR URUGUAY ROUND

We are very pleased that a new round of multilateral trade negotiations was successfully launched last fall at a meeting in Punta del Este, Uruguay and that a full work program is already underway in Geneva. Multilateral trade negotiations serve two purposes. First, they are the most effective means of furthering the liberalization of all forms of barriers to trade in goods. This is the eighth round of negotiations since the GATT was opened for signature, but many barriers to trade remain. While average tariff rates are low, some specific rates are high, and warrant further reduction so as to expand trade. Attempts to deal with non-tariff barriers to trade, begun in previous multilateral negotiations, must be continued as further progress is required. This round of negotiations also is working on the broadening of GATT to cover such new areas as intellectual property rights, trade in services, trade-related investment barriers and trade in high technology products. The second purpose of negotiating is to allow countries to bring new problems to the negotiating table that might otherwise result in unilateral protectionist action.

We believe that the type of negotiating authority provided the President before the Tokyo Round remains appropriate. It required close consultation with the private sector and the Congress; provided discretion in reducing tariffs up to set limits, and provided for expedited Congressional approval of agreements when, and as reached. This authority left know doubt that the United States wanted serious negotiations. We would applaud proposals to strengthen the requirements for consultations with the private sector. In this regard, we note that some of the more important trading countries in the Hemisphere have begun to establish their own private sector-government consultative mechanisms for trade negotiations.

AACCLA also urges that bilateral negotiating authority be maintained, since this offers the possibility of progress on trade issues which may not be addressed in the multilateral negotiations. Bilateral negotiation would be particularly useful in relation to Latin America if it could produce faster results.

AACCLA SUPPORTS CONGRESSIONAL PROPOSALS TO IMPROVE U.S. EXPORT COMPETITIVENESS

We supports proposals designed to improve the general competitiveness of U.S. exports. Some of the suggested measures have been a long time in discussion and are needed now. These measures include:

1. Modification of the Foreign Corrupt Practices Act (FCPA). We oppose corruption, but the FCPA places unrealistically high standards on U.S. business, resulting in a competitive disadvantage relative to foreign business. The current law is unclear, leaving American companies open to prosecution depending upon judicial interpretation. AACCLA supports congressional efforts to clarify ambiguities in the current law. At the same time, we would like to see corrupt practices addressed in a multilateral context, with emphasis on finding ways for enforcing realistic standards and providing guidelines for actions to be taken against those who solicit payments as well as those who make them.

2. More effective protection of U.S. intellectual property rights through modernization of U.S. law to better combat the problem of counterfeiting and patent infringement, including enhanced coverage of software and bionetics.

3. Implementation of an export "war chest" to enable U.S. exporters to compete in situations where foreign governments have provided excessive export credit subsidies.

We are pleased to note that many of these proposals are included in H.R. 3, the bill being marked up by your committee.

AACCLA IS CONCERNED ABOUT CERTAIN PROVISIONS IN H.R. 3

From the perspective of AACCLA, we are concerned with a number of proposals mentioned in connection with an omnibus trade bill. Many of the objectionable proposals are embodied in H.R. 3. We are concerned also with some other proposals which are under consideration in the Senate but not included in H.R. 3.

AUTHORITY FOR TRADE DECISIONS SHOULD REMAIN WITH THE PRESIDENT AND THE USTR-CHAIRED INTERAGENCY PROCESS

We strongly support the system of checks and balances inherent in the current decision-making authority on trade issues. Interagency consideration coordinated by USTR assures that any decision on trade or trade policy is reviewed thoroughly. Thus, a decision to close U.S. markets to certain imports must take into account the differing analytical perspectives, such as the effect of barriers on U.S. competitiveness (Council of Economic Advisors), foreign exchange earnings of the larger debtor nations (Treasury), the attainment of U.S. foreign economic objectives (State), and the potential for trade retaliation (USTR). The current system maintains the President's role as overseer of the "overall national interest," and should remain unchanged. We oppose proposals in the House bill to reduce the role of the President and of agencies other than USTR in the decision-making process.

H.R. 3 SHOULD NOT REQUIRE RETALIATION IN VIOLATION OF GATT OBLIGATIONS

We have stated our concern over proposals to make possible U.S. unilateral actions in violation of the GATT. We strongly support efforts to improve GATT's dispute settlement mechanisms so as to produce prompt decisions and clear statements of what is or is not permitted under the GATT. Such improvement will not be either quick or simple and the U.S. should allow adequate time for negotiations to bring about the desired changes. AACCLA opposes the concept in both the House and Senate bills that the U.S. should take upon itself the responsibility to judge whether actions of other countries violate GATT rules and are subject to retaliatory action. This offers a dangerous precedent which could result in U.S. trading partners passing similar judgment on U.S. exports and to an overall breakdown of the multilateral system built up painstakingly since World War II. We therefore oppose those provisions in H.R. 3 which would place us in violation of our GATT obligations or which would require action before the GATT Dispute Settlement mechanism has had a reasonable opportunity to function.

SURPLUS COUNTRIES SHOULD NOT BE SINGLED OUT FOR PUNITIVE ACTION

We are concerned with proposals to require unilateral Presidential action against countries with allegedly persistent trade surpluses. Such provisions violate GATT, do not allow the forces of competitive advantage to play a role and do not recognize the responsibility of the U.S. to maintain its own competitive edge. Even though countries with balance of payments difficulties would be subject to less stringent countermeasures, they are still covered by the basic provisions. Unilateral restrictions and excessive concern about bilateral trade deficits could also undermine the multilateral system. Any attempt to correct a negative balance-of-trade situations through retaliation not sanctioned by the GATT would not solve the real problem, but would lead to retaliation against U.S. exports. We are pleased to note that both the Senate and the Administration bills under consideration do not contain such proposals.

DEFINITIONS IN UNFAIR TRADE STATUTES SHOULD BE GATT CONSISTENT

We are concerned with other proposals to require countermeasures against foreign actions which are currently GATT consistent.

AACCLA is particularly concerned about two such proposals in the House bill. One would subject to U.S. countervailing duty statutes certain imports produced with low priced energy or other primary product inputs. This would be a clear GATT violation. It would have a heavily negative impact on the export industries of Mexico and possibly Venezuela. It would also create troublesome possibilities of retaliation against U.S. exports if U.S. trading partners chose to apply the same criteria.

A related proposal, which is contained in the Senate as well as the House Bill is for the United States to unilaterally change its rules on so-called diversionary dumping. The proposal in H.R. 3 to allow action against a third country product contravenes U.S. international obligations and subjects an innocent third country producer to unforeseen U.S. retaliation.

We are also concerned about proposals in the two Congressional bills to shorten the time periods, and otherwise accelerate decisions in trade policy cases. Current time periods and decision points represent an acceptable balance between the petitioner's need for prompt relief and the needs of the foreign respondent to prepare complete replies.

PROVISIONAL RELIEF PARTICULARLY FOR PERISHABLES COULD HAVE A SERIOUS IMPACT ON LATIN AMERICA

We are concerned by proposals to allow for provisional relief in escape clause cases. The record does not bear out the contention that during the period of consideration, imports come in at such levels as to cause irreparable damage to the petitioning industry and its workers. This, too, would be a violation of the GATT.

An especially serious threat to Mexico and other Latin American exporters of fruits and vegetables is the so-called fast-track relief for perishable products. Under the House and Senate bills, escape clause relief could be imposed within a short period of time after a complaint without even a USITC injury finding, based on very scanty evidence of market disruption and without consideration of factors normally required in escape clause proceedings, such as the interests of consumers and of the overall national economic interest. Although these proposals are modeled after provisions in the CBI and the U.S.-Israel FTA, the current proposals are much more dangerous. In the CBI and U.S.-Israel FTA, fast track relief is limited to restoration of normal U.S. tariff rates. What is now proposed is the authority to impose quantitative restraints without adequate consideration of all the facts involved.

AACCLA OPPOSES SECTORAL PROTECTIONISM

We oppose sectoral protection, whether for textiles, footwear or copper. Current trade laws provide an opportunity for remedy. If specific industry requests for relief are turned down by the agencies charged with this responsibility, there should be no ex poste special legislative remedy.

One sectoral-specific bill introduced separately in the House would replace the current MFA with global quotas on specific categories of textile imports. Although 1986 saw a large growth in textile imports, this growth is slowing down as the effects of the restrictive agreements negotiated with the major Far East suppliers last year begins to be felt. Whatever growth there will be in U.S. textile imports, and this growth is slowing down, will come from developed countries not covered by the MFA. Little real assistance to the industry would be provided from the application of stricter quotas to Latin American textile imports into the United States.

GSP BENEFITS SHOULD NOT BE REDUCED

Finally, we are concerned with proposals designed to remove countries from GSP eligibility. We believe these proposals violate the spirit of the Trade and Tariff Act of 1984 which provided that the more advanced developing countries could retain eligibility, and even possibly expand the benefit of GSP, in exchange for concrete steps to open their markets further to American products, services and investments. Many current proposals ignore this tradeoff, seeking to "graduate" countries like Brazil and Mexico, thereby reducing international market access rather than expanding it.

In this regard, we have taken note of the proposal in the House bill to shift GSP benefits from Far East newly industrialized countries (NIC's) to Latin American debtor countries. Although we support this provision in principle, it would be much more beneficial for Latin America if limitations on product eligibility were relaxed as well.

AACCLA OPPOSES PROPOSALS TO LIMIT ADMINISTRATION'S NEGOTIATING FLEXIBILITY

We support most elements of the proposals for authority to carry out multilateral trade negotiations. We are concerned only with two of the provisions. The first is the requirement of Congressional approval of tariff reductions for products considered import sensitive in the context of GSP. This would establish a bad precedent for trade negotiations since previous U.S. practice has been for Congress to preauthorize tariff concessions, subject only to private sector and USITC advice. Also, failure of Congress to ratify any concession could unravel the whole package. The second is the provision setting exacting negotiating objectives for the Administration. While we agree that it is important for the Congress to clearly indicate its expectations for the negotiations too specific a set of objectives would reduce the Administration's ability to determine the final content of the negotiation without threat of Congressional disapproval.

AACCLA WANTS U.S. ACTION IN THE FORM OF NEGOTIATED SOLUTIONS

There are many proposals before the Congress for unilateral steps to correct what are perceived as abuses in the international trading system harmful to U.S.exporters. In place of unilateral actions which could place the United States in violation of its GATT obligations, subject U.S. exports to retaliation and, more importantly, undercut U.S. credibility in arguing for observance of strict standards, we believe it would be more appropriate for Congress to demonstrate its concern by instructions to the Administration to treat these issues in the MTN. We support their inclusion in the list of MTN negotiating objectives.

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STATEMENT OF
GEORGE C. NIELD, PRESIDENT
AUTOMOBILE IMPORTERS OF AMERICA, INC.
ON PROPOSED AMENDMENTS TO SECTION 301 AND THE ESCAPE CLAUSE

SUBMITTED TO THE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
FEBRUARY 27, 1987

This statement is submitted by the Automobile Importers of America, Inc. (AIA), an association of automobile importers in the United States, including 11 European and 9 Asian companies. A list of AIA's members is attached to this statement.

AIA's statement expresses opposition to two amendments to "section 301", the market access statute (sections 301-306 of the Trade Act of 1974) and to five amendments to the escape clause (sections 201-203 of the Trade Act of 1974) that are being considered in the Congress. These amendments would do the following:

1. Impose quotas on imports from countries with allegedly excessive bilateral trade surpluses with the United States.

2. Reduce the President's discretion in order to make import restrictions more automatic in certain types of section 301 cases.

3. Transfer the authority to grant import relief from the President to the U.S. Trade Representative (USTR).

4. Authorize provisional import relief before the decision of the U.S. International Trade Commission (ITC).

5. Require the granting of import relief if most or all of the members of the ITC recommend such relief.

6. Prohibit the ITC from treating as a single cause declining demand associated with a recession.

7. Authorize the auctioning of escape clause quotas.

The first amendment is found in section 119 of H.R. 3. The second is found in section 112 of H.R. 3 (and a variation, not specifically discussed here, is found in section 302 of S. 490). The third amendment is found in section 121 of H.R. 3. The fourth amendment is found in section 121 of H.R. 3 and section 201 of S. 490, the omnibus trade bill recently introduced by Senator Bentsen (D-Texas) and others. The fifth amendment is contained in section 201 of S. 490. The sixth amendment is set forth in section 5006(a) of the Administration's trade bill, H.R. 1155 and S. 539. The seventh amendment is not in any of these three bills, but Treasury Secretary Baker has indicated his interest in the proposal.

For the reasons expressed below, AIA believes that each of these amendments is fundamentally inconsistent with the purposes of section 301 and of the escape clause, respectively, and the maintenance of a liberal trade policy. Adoption of these amendments would render any trade bill distinctly protectionist and contrary to the national interest.

With respect to the escape clause, AIA is particularly well-qualified to comment because its members were respondents in the escape clause case brought by the UAW and Ford Motor Company in 1980. This case involved the largest amount of trade in the history of the escape clause. Some of AIA's members were also respondents in the 1983 motorcycle case under the escape clause.

Section 301 of the Trade Act of 1974 is a market access statute which provides the President with the authority to attempt to persuade foreign countries to eliminate unfair acts, practices, and policies and to bring foreign practices into line with international agreements. Of the major U.S. trade statutes, section 301 is unique in that it is specifically aimed at providing increased market access abroad for U.S. exports. AIA believes that the intent of section 301 is to eliminate unfair trade barriers and practices by negotiation rather than retaliation. The vast majority of concluded 301 cases in the last 12 years have been terminated without resorting to retaliation. In our view, retaliation represents the failure, not the success, of a section 301 case.

While we support the overall goals of section 301, it could be used improperly if its retaliatory provisions are made mandatory or too automatic. In such circumstances, section 301 could not only fail to achieve its objectives, but tend to be counter-productive. Specifically, with respect to retaliation, whenever any increased duties or import restrictions are used to address these unfair acts, practices and/or policies, there is likely to be an adverse impact on U.S. consumers and perhaps U.S. exporters in the form of higher prices, more limited choice and/or counter-retaliation.

Generally, we believe that certain improvements could be made to section 301, e.g., the imposition of reasonable negotiation deadlines (ideally, corresponding to GATT dispute settlement proceeding deadlines). However, we are deeply concerned by, and oppose, provisions contained in H.R. 3 which could make retaliation mandatory or more automatic in some circumstances. We believe that H.R. 3 would largely transform section 301 from a negotiation to a retaliation statute.

1. Retaliation based on bilateral trade balances.

The most objectionable feature of H.R. 3 as it pertains to section 301 is the provision which would, in effect, require the imposition of quotas shortly after enactment on importations from countries such as West Germany and Japan based on their bilateral trade surpluses with the United States and their overall trade surpluses.

This "trade surplus quota" proposal is an egregious example of unilateral trade policy that is both uninformed and destructive. AIA strongly urges that it be dropped from H.R. 3.

This "trade surplus quota" proposal simply does not take into account one fundamental fact. Our trade deficit is a result not of unsound trade policy but of a poorly-working monetary system. The overwhelming majority of all internationally-traded goods are traded in a commercially fair way. Only the minority are vulnerable to attack under such statutes as the dumping and countervailing duty laws. Economists generally agree that the trade deficit is predominantly the result of the budget deficit and the misaligned dollar. As the dollar declined in value, imports have and will become more expensive and exports cheaper. It is therefore the budget and monetary areas that demand the closet attention.

The "trade surplus quota" proposal would reap severely destructive consequences. It would bring about a contraction of imports and exports. If other countries sought to comply with its targets, they would almost certainly act to restrict their exports to the United States. Moreover, if other countries found their exports unilaterally curtailed by U.S. quotas, they would be very likely to retaliate by taking even fewer U.S. exports. The mechanism of this "trade surplus quota" proposal is therefore calculated not to expand but to constrict and reduce international trade. All countries, including the United States, would suffer.

The "trade surplus quota" proposal turns its back upon the international collaboration that has brought such an expansion in economic activity throughout the world since World War II. In particular, the successive rounds of GATT negotiations have liberalized trade and allowed it to grow enormously since the end of the war. This misguided proposal would severely impair that process and put a chilling effect on U.S. efforts to mount a new round of multilateral trade negotiations.

2. Mandatory retaliation in section 301 cases.

AIA also is concerned by provisions in H.R. 3 which require mandatory retaliation against a trading partner if, among other things, that country engaged in an act, policy or practice which unjustifiably burdens or restricts U.S. commerce, subject to certain exceptions.

We believe that section 301 has worked reasonably well and that it should continue to be used in appropriate cases. However, we oppose amendments to section 301 which mandate or dictate the terms of possible retaliation since existing Presidential authority is sufficiently broad and such proposals would lead to a reduction in the Administration's flexibility, thereby reducing the prospects of successful section 301 negotiations. In short, such proposals lose sight of the fact that the President must consider a broad spectrum of questions and interests, including such issues as whether the particular act, policy or practice has a U.S. counterpart. More important, such proposals lead in the direction of transforming section 301 from a negotiation statute to a retaliation statute.

3. Transfer of import-relief authority from President to the USTR in escape clause cases.

Section 121 of H.R. 3 would transfer to the USTR all the authority now vested in the President by the escape clause. In particular, this would include the critical determination of whether to grant import relief.

The escape clause now directs the President to base his determination of whether to grant import relief on the national economic interest. That interest includes, but is not limited to, nine statutory criteria that are different from those required to be considered by the ITC. The President, for example, must consider the effectiveness of import relief as a means to promote the adjustment of the domestic industry, and the effect of such relief on consumers. In practice, the President's decisions have been guided not so much by the specific criteria in the statute as by the overriding standard that he must apply: the national economic interest. This term necessarily embraces a wide range of factors, both domestic and international.

The USTR has neither the authority nor, as a consequence, the expertise to determine what is or is not in the national economic interest. The President is capable of taking into account the broad range of considerations; the USTR, on the other hand, deals only with trade issues and has no expertise to evaluate the many other facets of the national economic interest. The USTR would also be more susceptible than the President to political pressure to decide in favor of import relief. The USTR's authority, unlike the President's, does not depend on a broad political base, and he is therefore more likely than the President to be vulnerable to demands for protection from particular sectors of U.S. business. The USTR can treat such pleas at arm's length as long as he is an advisor to the President under the escape clause. Once he becomes the decision-maker, he would have to be all-too-sensitive to such pleas.

In short, such a transfer of authority would be likely to precipitate ill-considered import restrictions, with all of the adverse consequences of such restrictions.

4. Provisional import relief before ITC decision.

Section 121 of H.R. 3 would add a new provision to the escape clause that would require the USTR to grant provisional import relief before the ITC's decision, if he made a preliminary determination that "critical circumstances" existed. The provisional import relief would include the suspension of liquidation. It could also entail the posting of a cash deposit or other security.

The vagueness of the definition of "critical circumstances" would render this new authority subject to serious abuse. Section 121 would provide that "critical circumstances" exist

> if a substantial increase (absolutely or relatively) in the quantity of an article being imported into the United States over a relatively short period of time has led to circumstances in which a delay in the taking effect of import relief would cause harm that would significantly impair the effectiveness of such relief. (Emphasis added.)

The underlined words assure that any determination of "critical circumstances" would be subjective and therefore readily open to considerations unrelated to the merits of a given case. This subjectivity is confirmed by the fact that the new provision would give the USTR only 30 days in which to make his determination. In short, this provision would afford too much room for accommodations to protectionist pressures.

Moreover, if the USTR decided upon provisional import relief, it would prejudice the ITC's decision. The ITC would no longer be playing an independent role but would instead have to justify either agreeing or disagreeing with the USTR's determination. As a result, the separation of the ITC from the Executive Branch, which should be highly valued, would be significantly compromised.

5. Mandatory import relief if most or all of the ITC members recommend such relief.

Section 201 of S. 490 would require the President to grant the import relief recommended by the ITC in escape clause cases if the ITC decision were unanimous. The President could depart from the ITC's recommendation only with Congressional approval. Section 201 of the bill would also require the President to grant the import relief recommended by the ITC if the ITC decision were by majority vote, unless he decided that import relief would be detrimental to the national security or would cause serious injury to the domestic industry.

These amendments disregard the fundamental purpose of the escape clause, which is to provide temporary import relief to a domestic industry only if it is consistent with the national economic interest. The escape clause, unlike the antidumping or countervailing duty statutes, for example, is concerned with fairly-traded imports. For that reason, if escape clause relief is granted, the United States must pay compensation to, or suffer retaliation by, the affected countries. Either action has a significant impact upon other U.S. industries.

It is therefore domestically unsound and internationally dangerous to so straight-jacket the President and deprive him of the vital discretion to determine what is in the national economic interest. This is particularly true given the narrow decision that the ITC is required to make. Its decision cannot, as a matter of law, take into account a range of considerations bearing upon domestic and international trade and economic policy. From time to time, in recent years, the ITC has had only three Commissioners, with three seats vacant. It is simply ludicrous to provide that as few as three ITC members could force the President to take an action that he would deem inconsistent with the economic interest of the country.

6. Barring ITC from treating as a single cause declining demand associated with a recession.

Section 5006(a) of the Administration's trade bill would add a new provision to the escape clause, reading as follows:

> For purposes of determining whether an increase in imports (either actual or relative to domestic production) is a substantial cause of serious injury to a domestic industry or a threat thereof, the Commission should consider the condition of the industry over the course of the relevant business cycle and shall not aggregate the causes of declining demand associated with a recession or economic downturn into a single cause of serious injury.

This amendment is objectionable for the following three reasons.

First, it straight-jackets the ITC and prevents it from carrying out its essential role. The escape clause now requires the ITC to take into account all economic factors it deems relevant in making its decisions. Since the escape clause was first enacted in 1951, the ITC has been able to make its analyses in an objective and impartial manner. The Administration's amendment would arbitrarily tell the ITC that it could not take into account declining demand associated with a recession. To straight-jacket the ITC in this manner would deprive it of the ability to make its decision based upon the fullest and most comprehensive review of all the relevant factors. The amendment would severely limit this discretion and force the ITC to undertake an artificial analysis of the causes of injury. Given the variety and complexity of escape clause cases, it is unsound to attempt to prejudge the relevance or weight of any one economic factor.

Second, the amendment would conflict with a fundamental purpose of section 201. That purpose is to give domestic industries temporary relief from increased imports when they are a cause of injury that is at least as important as any other cause, even though the imports are fair and legal. If imports are less important than any other cause, then import relief is by definition not the appropriate remedy.

This is particularly true since import relief under section 201 is expensive. It imposes additional costs upon the consumers and otherwise promotes inflation. Moreover, by virtue of our international obligations, the United States must pay compensation, in the form of reduced restrictions on imports, or suffer retaliation, in the form of increased restrictions on exports. It is therefore helpful neither to domestic industries nor to the national economic interest to impose import relief under section 201 when imports are a lesser cause of injury.

The Administration's amendment would undermine the purpose of section 201 by allowing import restrictions to be imposed even when an industry's injury has not been caused primarily by imports. In this sense, the amendment would change the escape clause from a temporary import relief statute to a recession-injured industry relief statute. Virtually all U.S. industries face at least some import competition. Accordingly, during a recession, almost any domestic industry could attempt to block imports by arguing that imports are the second largest cause of injury, even though the recession-related declining demand were admittedly the primary cause. To suggest, as the Administration's amendment does, that declining demand cannot be properly considered a discrete cause defies reality. Declining demand is just as distinct a cause of injury as increased imports, even though each, in turn, may have its own causes.

Third, the amendment is unnecessary. It is not true, as proponents of the amendment argue, that escape clause relief is always denied during a recession because declining demand associated with a recession is considered to be a greater cause of injury to the domestic industry than imports. In fact, the escape clause has been found in recent decisions to allow relief during an economic downturn. For example, in Unwrought Copper (1984), the ITC recommended import relief to the recession-sensitive copper industry, even though a significant cause of the industry's injury was the declining demand caused by earlier recessions. Similarly, in Carbon and Certain Alloy Steel Products (1984) and Stainless Steel and Alloy Tool Steel (1983), the ITC determined that a declining demand due to the 1982 recession was at least partly responsible for the domestic industry's injury. Nevertheless, it found that increased imports were a more important cause of injury and recommended import relief.

It is therefore by no means a foregone conclusion that declining demand associated with a recession will necessarily be a cause of injury greater than imports. Whether one or the other is the greater cause depends upon their relative significance. If imports occupy only a small share of the market and have increased only slightly, a major decline in demand would probably be the greater cause of injury. If, on the other hand, the decline in demand is small and the increase in imports is large, the latter would in all likelihood be the greater cause. In short, the very fact that the economic conditions affecting domestic industries can vary so from case to case makes it impossible to predict the significance of any one factor.

7. Auctioning of escape clause quotas.

None of the three omnibus trade bills authorizes the auctioning of quotas that might be imposed under the escape clause. Nevertheless, Secretary Baker expressed interest in the idea before the Committee on February 10, 1987. This idea is unsound for the following two reasons.

First, it would make it substantially more difficult to keep escape clause relief as temporary as possible. The escape clause now provides that such relief should initially last no longer than five years, allows an extension of no more than three years, and urges that the relief be phased down after the third year. If, as apparently intended, the auctioning of escape clause quotas would raise a substantial amount of revenue, the quotas would become addictive and that much harder to terminate before the eighth year. This would be even more true if the period for escape clause relief should be extended.

Second, the creation of a system to implement the quota auctioning would give rise to a bureaucratic nightmare involving a series of complex implementing regulations. Take an imported product that consists of many classes covering a wide gamut of price ranges. How would the classes be defined? How would the price ranges be demarcated? How would old and new, large and small importers be accommodated? Would a successful bidder be required to use the quota or would inaction be permitted, thereby depriving consumers of a full measure of price competition? In short, the auctioning of escape clause quotas would create another non-tariff barrier that would penalize importers and consumers. Consumers would wind up paying not only the increased prices that typically accompany products under quota but the auction fees, as well. The inflationary effect of quotas would thereby be compounded.

This statement is submitted by:

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Attachment

AUTOMOBILE IMPORTERS OF AMERICA, INC.

ALFA ROMEO
BMW
FIAT
HONDA
HYUNDAI
ISUZU
JAGUAR
LOTUS
MAZDA
MITSUBISHI
NISSAN
PEUGEOT
PORSCHE
RENAULT
ROLLS-ROYCE
SAAB-SCANIA
SUBARU
SUZUKI
TOYOTA
VOLVO

STATEMENT OF CABOT CORP.

Mr. Chairman and Members of the Committee, Cabot Corporation appreciates the opportunity to submit its views on H.R. 3, the Trade and International Economic Policy Reform Act of 1987.

Cabot is based in Waltham, Massachusetts, and has operations in several states and foreign countries. It is a Fortune 300 company with businesses in the speciality chemicals and materials and energy sectors. Through its Speciality Chemicals and Materials Group, Cabot is the world's leading producer of carbon black, an essential reinforcing agent in rubber and plastics as well as a pigment in inks, paints, coatings and plastics. We have carbon black plants in Texas and West Virginia and two in Louisiana.

Most carbon black goes into rubber tires—typically more than five pounds per automobile tire—and is in large part responsible for the fact that modern tires can commonly be driven more than 40,000 miles. It is well accepted that rubber is a critical, strategic material. We believe that carbon black is similarly essential to America's economy and national security.

Our interest in H.R. 3 focuses on Section 135, "Resource Input Subsidies." We want to applaud the chairman of this subcommittee and the sponsors of the bill, as well as others in the Congress, who have recognized that countervailable subsidies are not only cash grants or tax credits but also can take the form of unreasonably low-priced natural resource inputs. As the chairman of this subcommittee has said during the current hearings, a subsidy is a subsidy whatever form it may take and subsidized trade is not free trade.

The resource input subsidies section of the trade bill is critical to our company because of the serious threat of subsidized Mexican carbon black being poured into the U.S market. Carbon black is a commodity and is highly price sensitive. A price difference between suppliers of one-tenth of a cent per pound can easily shift a sale. Since there are only seven major tire companies buying carbon black in the U.S. and since 93% of carbon black goes into rubber end products (mostly tires), our domestic carbon black industry is especially vulnerable to a sudden domino effect in loss of sales triggered by predatory pricing.

We at Cabot agree with many national leaders who believe American manufacturers must increase their productivity to compete in the global economy. This is why we have invested millions of dollars over the last decade to make our plants more efficient and to advance our product development and process technology. However, no amount of research and development could overcome the size of the subsidy which Mexico provides to its carbon black exports.

Seventy percent of the input costs in the production of carbon black consists of carbon black feedstock (CBFS), a hydrocarbon-based raw material. According to International Trade Commission figures, Mexico supplied its domestic carbon black industry with CBFS in 1984 at $5.61 per barrel while the U.S. price was between $26.50 and $29 per barrel.

The Mexican government's pricing policy for this resource input is quite explicit. The 1979–1982–1990 Mexican Industrial Development Plan states:

> This plan [the IDP] is complemented by an explicit policy of maintaining internal prices of energy sources for industrial use below that of the international market. This allows for the strengthening of industry by giving it a *substantial margin of protection via inputs.* In contrast to other forms of protection which tend to make such cost more expensive and access to external markets more difficult, *this mechanism constitutes a direct incentive to exports.* (Emphasis added.)

Despite our superior production efficiencies, imports of subsidized Mexican carbon black have demonstrated a significant ability to penetrate the U.S. market quickly. In 1982, carbon black imports from Mexico totalled 6.7 million pounds. In 1983, Mexican exports to the U.S. tripled, to nearly 19 million pounds. In 1984, almost 50 million pounds of carbon black were imported to the U.S. from Mexico and in 1985 they edged above the 50 million mark. For the first eleven months of last year, imports fell back to 31.7 million pounds. While we believe our concerted efforts before the Commerce Department and the Court of International Trade have kept the price of Mexican carbon black in doubt for the time being, the import penetration remains at a level approximately five times the quantity coming in from Mexico as recently as 1982.

In addition, Mexico has announced plans to expand further its carbon black production capacity, which already substantially exceeds the Mexican market demand. This additional capacity would equal approximately 25 percent of current total U.S.

capacity. The target for this additional Mexican carbon black is the U.S. market, where domestic producers already have substantial excess capacity. This poses a devastating threat to U.S. carbon black producers and workers.

Cabot Corporation has assiduously pursued its remedies under existing law. These efforts have been the source of considerable expense and frustration. We think our case is a good example of why action by Congress is needed.

In November of 1982, Cabot asked the U.S. Department of Commerce (DOC) to impose a "countervailing duty" on carbon black imports to the U.S. from Mexico. During the period of investigation, the DOC found that Mexico (through its government controlled oil monopoly Pemex) was selling carbon black feedstock (CBFS) to the two Mexican producers for less than $2.00 per barrel, which U.S. producers were paying the world market price of $26.00 per barrel. The DOC further found that Pemex owned 60% of one of these two carbon black producers.

Despite these findings, the DOC concluded that Mexico's subsidy was not countervailable because CBFS was "generally available" to any Mexican company which could use it. This agency-made loophole on "general availability", (which is unsupported by statute or legislative history) essentially means that if a foreign government subsidy benefits an indefinite number of industries instead of specific ones, the U.S. Department of Commerce will look the other way. The fact that only two Mexican companies could use CBFS, that Pemex had allocated all of the CBFS to the two carbon black producers, and that Pemex refused to sell any CBFS to Cabot despite repeated requests, did not deter the DOC from concluding that the subsidy was "generally available" and not countervailable under the DOC's interpretation of present U.S. law.

Although the Court of International Trade has rejected DOC's "general availability" test, the issue still has not been resolved after four and a half years before the agency and the court. The bottom line seems to be that—despite court decisions and statutory language and legislative history to the contrary—the Administration is determined to deny countervailing duties in cases involving two-tiered pricing of resource inputs which are used to subsidize exports by certain natural resource-rich developing countries.

The 1986 U.S.-Canada lumber agreement is cited by some as evidence that current law can deal with resource input subsidies. We disagree with this point of view. The lumber settlement was reached after enormous political pressure was brought to bear on the Administration. It involved consultations with Canada at the very highest level. We believe it does not exemplify the kind of flexible, realistic, timely or predictable process which should be available to address resource subsidies being provided by a number of countries with a host of bilateral concerns at issue between them and the United States.

If Congress fails to act on the natural resource subsidy problem, the American producers of carbon black and other price sensitive petrochemicals face a sufficiently serious threat of material injury that they could suffer sudden and dramatic losses of markets even though they are competitive by any fair definition of the word. We are glad that this committee is seizing the opportunity to address this critical national problem. We at Cabot Corporation thank you for your leadership in this regard and we would be glad to provide further information at any time.

STATEMENT OF CAMARA DE LA INDUSTRIA DE TRANSFORMACION DE NUEVO LEON
(THE CHAMBER OF COMMERCE OF TRANSFORMATION INDUSTRIES OF THE STATE OF NUEVO LEON, MEXICO)

I. Introduction

Pursuant to the notice of the Subcommittee on Trade, Committee on Ways and Means, the Camara de la Industria de Transformacion de Nuevo Leon ("CAINTRA", the Chamber of Commerce of Transformation Industries of Mexico's State of Nuevo Leon) hereby submits comments on H.R. 3, the Trade and International Economic Policy Reform Act of 1987. Specifically, CAINTRA opposes Section 135 of H.R. 3, entitled "Resource Input Subsidies", a provision which would significantly alter the internationally accepted definition of export subsidies by imposing countervailing duties on foreign manufactured products simply because they utilize inexpensive indigenous natural resources in the manufacturing process.

This provision is directed primarily at exports from three of the United States' most important trading partners (Canada, Mexico, and Saudi Arabia). With respect to exports from Mexico, the pending legislation is designed to impose countervailing duties upon virtually any article exported from Mexico which requires the use of natural gas or other petroleum products. This would result in limiting market opportunities for Mexican manufacturers in the United States, which would exacerbate Mexico's already severe foreign exchange problem. Because of the interdependence of the United States and Mexican economies, passage of such natural resource pricing legislation would damage U.S. interests through an adverse impact on U.S. exports to Mexico, U.S. imports of components and materials from Mexico, and the ability of Mexican exporters to meet foreign debt obligations on a current basis.

II. Interest of CAINTRA

CAINTRA was established in 1944 to represent the interests of transformation industries in the Mexican state of Nueva Leon. CAINTRA has 8,169 member companies, 75 percent of which are manufacturers; the remaining members are service-oriented firms. The companies comprising CAINTRA exported approximately $600 million worth of goods in 1984. During the same period, these companies imported approximately $400 million worth of raw materials and equipment from the United States. CAINTRA member companies account for approximately 7.5 percent of the total value of exports of all Mexican manufactured goods, and its members account for approximately 10 percent of Mexico's total industrial production. CAINTRA members provide employment for some 200,000 workers, or 35 percent of all workers in the Mexican state of Neuvo Leon, which includes the major industrial city of Monterrey.

III. Mexico's Natural Resource Policies And Pricing

The immediate targets of Section 135 of H.R. 3 are U.S. imports from Mexico of products such as cement, concrete block, lime, carbon black, ceramic tile, and ammonia. However, passage of this legislation would also limit other imports that are energy intensive, or that contain a substantial proportion of other resource inputs.

Under the Constitution of Mexico, natural resources, including petroleum and minerals, are the common property of all of the people of Mexico (Article 27 of the Mexican Constitution of 1917). To further the exploitation of Mexico's abundant petroleum supplies, the Government of Mexico established Petroleous Mexicanos ("PEMEX") in 1938. In a deliberate effort to maximize the exploitation of Mexico's abundant petroleum resources, the Government of Mexico has provided petroleum resources to all of its domestic industries at prices which are calculated to recapture the fully allocated cost of producing such resources. Until the dramatic increases in the export prices of oil established by the Organization of Petroleum Exporting Countries ("OPEC"), the difference between the price at which PEMEX provided petroleum products to Mexico's domestic industries and the export price of OPEC countries was insignificant. After the successive oil shocks of the 1970's, Mexico continued its policy of providing petroleum products to its domestic industries at prices which would cover the cost of producing such products, with the result that the price differential between OPEC prices and Mexico's domestic prices widened appreciably.

Because of Mexico's domestic economic difficulties, the need to reduce the Government's deficit, and in light of growing U.S. concern over Mexico's natural resource pricing practices, PEMEX has implemented a policy of increasing natural resource prices for domestic industry users, at the same time that the world market price for oil has plummeted, further closing the gap between the world price and that charged by the Government of Mexico. Similarly, the price for natural gas supplied to industrial users in Mexico increased 342 percent during the period January 1984 to December 1985, while the price for no. 6 fuel oil during the same period increased by 249 percent.

Most significantly, a comparison of recent U.S. spot prices for natural gas with the price of natural gas in Mexico during roughly the same time period shows little or no difference between such prices. Attached hereto as Exhibit 1 is a chart setting forth this comparison. Exhibit 1 shows that the price (as delivered to Mexican customers) for natural gas in Mexico in late 1986 was roughly equivalent to spot prices in California in early 1987 and well above spot prices in West Texas in early 1987. Similarly, an examination of recent prices in Mexico for no. 6 fuel oil demonstrates that even though the price in pesos to Mexican customers rose from October to November 1986 because of the exchange rate situation, the U.S. dollar price of Mexican no. 6 fuel oil actually dropped during this period. Exhibit 2, attached hereto, sets forth this information.

CAINTRA respectfully submits that this Subcommittee should consider the dramatic increases in natural resource prices for Mexican industrial users in deciding whether the proposed legislation, with its obvious dangers for the overall trade and economic interests of the United States, should be enacted.

IV. Section 135 of H.R. 3 Contravenes U.S. Trade Policy And U.S. Obligations Under International Law

International law distinguishes between generally available government programs and practices, on the one hand, and subsidies which are specifically related to export performance or directed toward specific industries or geographical regions.

This distinction has been incorporated into U.S. trade policy and is specifically embodied in the United States' countervailing duty law. This distinction has its origin in the recognition of the fact that every nation has "comparative advantages" in certain economic areas, based on natural resources, climate, and location, and that trade law should promote the most efficient use of such comparative advantages.

Consequently, only those governmental programs which are specifically designed to confer benefits upon a particular industry or industries within a country are countervailable, since only such programs artificially shift the allocation of scarce resources within a country's economy and create advantages which otherwise would not exist for industries in a favored sector of the economy. It is only against these specifically directed programs, which tend to be directed disproportionately to favored sectors of a country's economy, that the imposition of countervailing duties is justified and, to a certain extent, logical.

It is a normal function of government to establish generally available policies and programs for the utilization and development of a country's resources. Thus, a government must be expected and permitted to develop its country's natural resources and make them available to its people. Only when resources are provided to a specific sector of the country's economy on a preferential basis vis-a-vis other sectors, conferring advantages on such favored sectors which otherwise would not exist, does international law permit other countries to adopt reactionary policies or laws.

In this context, all governments, including the government of the United States, play significant roles in developing and distributing their countries' resources and infrastructure. Each nation has the fundamental sovereign right under recognized principles of international law to establish domestic policies with respect to natural resources in order to promote the country's economic and social growth.

It is against this background that a rational international consensus has developed, distinguishing those programs which are allowable from those which are properly the subject of countervailing duties. This consensus is recognized in the General Agreement on Tariffs and Trade (GATT) and the Subsidies Code, and has been incorporated into U.S. trade policy and law. As the Subcommittee is well aware, Mexico is a member of the GATT and subject to the rights and obligations embodied therein. General recognition of these factors by all cooperating nations provide consistency and predictability in international commerce and trade policy. The creation of authority under U.S. law to impose countervailing duties with respect to natural resource pricing practices would directly contravene these recognized fundamental principles on which the international trading system is based.

V. U.S. Trade Partners Could Be Expected To Retaliate By Imposing Countervailing Duties With Respect To U.S. Programs

If Section 135 of H.R. 3 were to become law, providing authority to impose countervailing duties with respect to natural resource pricing practices, the international consensus among U.S. trade partners concerning the underlying principles of countervailing duties would be broken and any reciprocal obligations on the part of these nations could not be enforced. The United States would be violating international trade norms and altering them in a manner inconsistent with its international obligations, thus inviting U.S. trade partners to do likewise with respect to the United States.

Like every other government in the world, the United States has many generally available programs such as tax incentives, a system of price supports for farmers, and a highly developed water resource system. Also, through defense, scientific research, and space programs, the U.S. spends large sums of money on high technology industries. Thus, the United States currently provides numerous benefits to its industries on an across-the-board basis. Contravention of generally accepted international trade principles is a two-way street. The United States cannot unilaterally modify accepted international rules and expect the rest of the world to continue to abide by them. For example, as stated by Gilbert B. Kaplan, Deputy Assistant Secretary for Import Administration, Department of Commerce, in recent testimony before this Subcommittee, the Government of Mexico recently announced a preliminary dumping finding of close to 100 percent against U.S. producers of caustic soda. Thus, breach of the generally accepted trade policy for natural resources could have a far-reaching, and to some extent unforeseeable, impact for U.S. industry. Even if foreign governments were to follow the general approach of H.R. 3 and limit themselves to natural resource inputs, U.S. trade partners could impose countervailing duties with respect to a number of U.S. government programs, including oil depletion allowances, price controls on natural gas, Tennessee Valley electricity, Western dams and irrigation projects, and government coal and oil leases.

The imposition of countervailing duties on U.S. goods sold in foreign markets with respect to the U.S. programs mentioned above would make U.S. exports more expensive, and therefore less marketable, in external markets, thereby harming U.S. export industries. If enacted, Section 135 of H.R. 3 could set in motion a process which would ultimately harm U.S. producers. Moreover, the expected harm to U.S. export-oriented industries would further increase the U.S. trade deficit, undercutting one important purpose of this legislation.

VI. A Healthy Mexican Economy Is Important To U.S. Interests

The state of the Mexican economy has always been of keen interest and importance to the United States. Besides the potential political ramifications of a deteriorating Mexican economy on both internal Mexican political stability and relations between the two countries, it must also be emphasized that the two economies are closely intertwined. Traditionally, Mexico has been the third largest market for U.S. exports -- only Canada and Japan have generally provided larger export markets for U.S. businesses. However, what is always not kept in mind in the United States is the fact that Mexico's ability to import goods from the United States is closely tied to its ability to obtain access to U.S. markets for its exports, to obtain needed foreign exchange to purchase U.S. goods. Over the past few years, it has been estimated that over 50 percent of the foreign currency which Mexico derives from its exports has been devoted to the purchase of U.S. goods.

Indeed, over the past few years, reports have begun to surface in the press describing the manner in which the U.S. economy overall, and individual U.S. businesses, have suffered as a result of the Mexican economic crisis, which has resulted in a sharp drop in Mexico's imports from the United States due to a lack of foreign exchange. Following the onset of Mexico's economic crisis in 1982, it was forced to cut back the quantity of imports from the United States, resulting not only in harm to U.S. businesses, particularly along the border, but also in the loss of thousands of U.S. jobs for the U.S. economy. It has been reported in a U.S. Department of Commerce study that approximately 25,200 jobs are generated by each billion dollar of exports. Therefore, for every $10 billion decline in U.S. exports to Mexico, over one-quarter million U.S. jobs are lost. It has also been estimated by Wharton Econometrics Forecasting Associates that the current Latin American debt crisis (of which Mexico has been a major participant) has cost the United States economy approximately $128 billion due to lost exports in the last three years.

Mexico's foreign debt now totals some $100 billion. Mexico paid over $6 billion in interest alone on its public sector debt in 1986. It is expected that Mexico will pay approximately $8 billion in interest and $7 billion in principal to service its debt in 1987, and it has been reported that the Government of Mexico has allocated 94% of the total value of its 1987 exports for that purpose. A large portion of this debt is owed to U.S. banks and other commercial interests. Mexico's ability to pay this debt is largely dependent upon its ability to export. Closing or eliminating access to the U.S. market for Mexican exporters, which would be the effect of the natural resources provision of H.R. 3, cannot help but exacerbate the Mexican debt repayment problems.

U.S. exports to Mexico decreased from $13.6 billion in 1985 to $12.4 billion in 1986. Similarly, Mexican imports to the United States decreased from $19.4 billion in 1985 to $17.6 billion in 1986. Although Mexico's non-petroleum exports increased by approximately 30 percent in 1986 (after a 5.2 percent decline in 1985), this increase was not enough to cover Mexico's losses from the low price of oil. In 1986, the drop in oil prices from more than $25 to as low as $12 a barrel cost Mexico 30 percent of its foreign exchange earnings and more than 12 percent of overall government income.

Mexico is attempting to restructure its foreign debt to give it a more favorable repayment schedule; however, at the same time, it needs to increase its overall debt in order to obtain the necessary foreign exchange to keep its economy running. Although Mexico has paid approximately $14 billion over the past 26 months to service its debt, it has not received any additional funds from the international banking community. Under such circumstances, access to the U.S. marketplace for Mexican manufacturers is more essential than ever. This current situation could be pushed beyond bearable limits by a further decrease in export revenues caused by the imposition of countervailing duties as a result of natural resource pricing policies. As stated previously, such a drastic downturn in the Mexican economy would have a substantial negative impact on the U.S. economy.

VII. The Government Of Mexico Has Taken Action To Improve Trade Relations With The United States And To Liberalize Its Trade And Investment Policies

During the de la Madrid Administration, the Government of Mexico has taken steps which have had the effect of improving trade relations with the United States and liberalizing its trade and investment policies. Most significantly, last year Mexico joined the GATT and took steps intended to bring its international trading practices into greater conformity with those of other western trading nations.

Other actions taken by the Mexican government within the last few years include: the unilateral elimination of Mexico's major export subsidy program (CEDI); the negotiation of the U.S.-Mexico bilateral subsidies agreement, signed in April 1985, and the additional commitment to develop a bilateral framework agreement on trade and investment between the United States and Mexico; a net reduction in the cost of importing goods into Mexico by removing prior import license requirements on thousands of product categories; and moving away from non-tariff barriers and toward the use of tariffs to regulate trade.

The Government of Mexico has also taken significant action in the area of intellectual property protection, an issue of great importance to the Administration. On January 17, 1987, Mexico enacted amendments to its patent and trademark laws which provide a number of important improvements. These improvements include extending the term of patents and certificates of invention form 10 to 14 years; providing process patent protection for pharmaceuticals, chemical products, alloys, foodstuffs and beverages for animals and agricultural chemicals; providing both process and product protection for anti-pollution equipment and apparatus; and various improvements relating to patent lapse, disclosure requirements, trade secret protection, and "trademark linkage." In recent testimony before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, Ambassador Michael B. Smith, Deputy United States Trade Representative, acknowledged these developments.

VIII. Conclusion

Section 135 of H.R. 3 would be economically and politically counterproductive to U.S. international trade policy and U.S. export-oriented industries. The proposed legislation is inconsistent with U.S. trade law and obligations under the GATT. The legislation would harm U.S. export-oriented industries by inviting U.S. trade partners to adopt similar measures, and by reducing earnings of U.S. trade partners from exports to the United States, thus reducing available revenue to purchase U.S. products.

With specific regard to Mexico, the proposed legislation would further depress the Mexican economy, making it difficult for Mexico to honor its substantial loan obligations to United States creditors and to continue importing from the United States. Moreover, an economically weak Mexico would be vulnerable to political destabilization, further exacerbating an already troublesome situation in Central America. Finally, the windfall benefits which would be conferred upon certain U.S. industries as a result of the proposed legislation would not be necessary, inasmuch as these industries have demonstrated their ability to compete without difficulty against imported merchandise.

For all of the reasons set forth herein, CAINTRA respectfully submits that the proposed natural resources pricing legislation should not be enacted.

Respectfully submitted,

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March 6, 1987

NATURAL GAS PRICE COMPARISON

UNITED STATES PRICE*

State	Price ($/mmbtu)
California	
Intra-state well head	$1.70
Delivered to pipeline	$1.76
Delivered to utility	$2.11
West Texas	
Inter-state well head	$1.38
Intra-state well head	$1.39
Delivered to pipeline	$1.48
Delivered to utility	$1.59

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*Source: Natural Gas Week (February 23, 1987)

MEXICAN PRICE*

Date	Pesos/cubic meter	U.S. Dollars/1000 cu ft.+
10/1/86	45.2174	$1.70
11/1/86	47.8261	$1.68

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*Price as delivered to Mexican customers. Source: PEMEX.

+Currency conversion using controlled exchange rate. On October 1, 1986, the rate was 754 pesos to the dollar, and on November 1, 1986, the rate was 808 pesos to the dollar.

NO. 6 FUEL OIL

MEXICAN PRICE*

Date	Pesos/liter	U.S. Dollars/barrel+
10/1/86	26.95	$5.68
11/1/86	28.696	$5.65

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*Price as delivered to Mexican customers. Source: PEMEX.

+Currency conversion using controlled exchange rate. On October 1, 1986, the rate was 754 pesos to the dollar, and on November 1, 1986, the rate was 808 pesos to the dollar.

PREPARED TESTIMONY OF ROBERT J. MYERS, PRESIDENT, CARNEGIE COUNCIL ON ETHICS AND INTERNATIONAL AFFAIRS, PROFESSOR HENRY NAU, SCHOOL OF PUBLIC AND INTERNATIONAL AFFAIRS, THE GEORGE WASHINGTON UNIVERSITY, AND KENNETH D. BALICK, DIRECTOR, U.S.-JAPAN INVESTMENT PROGRAM, CARNEGIE COUNCIL ON ETHICS AND INTERNATIONAL AFFAIRS

The U.S.-Japan Economic Agenda

The U.S.-Japan Economic Agenda is a two-year old joint project of the Carnegie Council on Ethics and International Affairs and The George Washington University in Washington D.C. The Agenda was initiated by a grant from the Japan-U.S. Friendship Commission and works directly with leading private- and public-sector representatives in the U.S. and Japan to address bilateral trade and investment issues. It is a nonpartisan, nonadvocacy program which concentrates on factors contributing to bilateral trade tensions in areas where specific private-sector initiatives can lead to tangible improvements.

Robert J. Myers, president of the Carnegie Council on Ethics and International Affairs, and Henry Nau, professor at the School of Public and International Affairs at The George Washington University, are codirecters of the project. Professor Nau replaced Gaston J. Sigur as codirector upon Mr. Sigur's appointment as Assistant Secretary of State for East Asian and Pacific Affairs.

The U.S.-Japan Economic Agenda sponsors a series of briefings, conferences, and publications to address sector-specific trade problems and inform policy makers and leading members of the business, journalistic, and academic communities on U.S.-Japan trade issues. Recent speakers at Agenda-sponsored meetings included Ambassador Clayton Yeutter, U.S. Trade Representative; Allen Wallis, Under Secretary of State for Economic Affairs; Gaston Sigur; Paula Stern, Chairwoman of the U.S. International Trade Commission; Akio Morita, Chairman of the Sony Corporation; Daniel Amstutz, Under Secretary of Agriculture for Political and Trade Affairs; the Honorable Takashi Sato, member of Japan's ruling Liberal Democratic Party; and Norman Augustine, President of Martin Marietta Corporation and former Chairman of the Defense Science Board.

A panel last fall entitled "Effective Negotiating with Japan" included former U.S.-Japan trade negotiators Joseph Greenwald, William Eberle, Alan Wolff and Clyde Prestowitz, who served under Presidents Kennedy, Nixon, Carter, and Reagan, respectively. An Agenda conference in Montreux, Switzerland last week considered problems and opportunities of the Uruguay GATT Round.

The Agenda also publishes a newsletter that highlights the program's activities and disseminates the Agenda's work to over 1,500 business and government leaders in the U.S. and Japan.

This testimony is based on the work of the U.S-Japan Economic Agenda.

The Competitiveness Problem

A consensus has emerged that the United States faces a competitiveness problem. Although few issues gather more bipartisan support, because we cannot define the terms of the debate or agree on the cause of the problems, we have been unable to agree on the appropriate solutions.

Blaming other countries as the source of America's trade problems is seductive. What better way to divert attention from the more contentious domestic factors contributing to America's gaping trade imbalance? However, even if our trading partners do all that we ask of them, the United States will still be left with a large trade imbalance.

Foreign Domestic Growth And Currency Adjustments Are Not Enough

It has become fashionable to blame the failure of Japan and West Germany to create enough domestic demand to absorb the output of their highly productive economies. While countries with large trade surpluses like Japan and West Germany should redirect their economic growth away from export markets, as recommended by the Japanese government-backed Maekawa Report, this alone will not solve the fundamental trade problems facing the United States. Harvard's Martin Feldstein, past chairman of the President's Council of Economic Advisers, has stated that, "Even doubling the projected real growth rates in the rest of the industrial world for this year and next would cut the 1988 U.S. trade deficit by less than $20 billion."

IMF economists estimate that an increase of one percentage point in the domestic growth rate in Japan and West Germany, maintained over three years, would alter the American trade balance by no more than $5 billion to $10 billion. The IMF estimate is in line with a report prepared for the Joint Economic Committee of Congress, which found that an increase of one percentage point in German and Japanese growth would reduce the United States trade deficit by only $9 billion to $12 billion.

The United States competitiveness problem also transcends the overvalued dollar. We cannot regain our international competitiveness by relying solely on currency adjustments. Despite the 40 percent depreciation of the dollar against the yen since February 1985, the huge American trade deficit--$165 billion last year--has remained roughly the same as in 1985, 2.9 percent of gross national product.

Against the currencies of our principal trading partners which peg their currencies to the dollar, namely Canada, Brazil, Taiwan and South Korea, the dollar has not declined significantly. Although the prices of Japanese goods in the United States have risen, they have not done so to the full extent of the dollar's depreciated exchange value. This reflects the Japanese willingness to accept smaller profit margins in order to hold on to market share.

Until now the United States has managed to handle its growing foreign debt without a decline in standard of living. We have enjoyed a standard of living higher than that which our productivity supports; we consume more than we produce. Heavy borrowing from abroad has financed the trade deficit via a massive inflow of foreign capital. Paying off the mounting foreign debt requires not only that the United States export more, but that American consumers accept more moderate increases in their standard of living.

The United States has undergone a dramatic transition in the past six years. With stunning speed, we have gone from the world's greatest creditor nation, with $150 billion in net assets abroad, to the world's largest debtor. It is estimated that by the end of 1988, the United States will be over $400 billion in debt, owing as much as all Latin American and black African countries combined.

If foreign investors grow leery of holding so much of their debt in dollars and external financing begins to diminish, or if stimulation abroad reduces the flow of foreign funds, the United States would be unable to finance its massive foreign debt. The Federal Reserve would face a difficult choice: it could address the diminishing pool of capital by raising interest rates, carrying the United States into a recession and risking a new international debt crisis; or in an attempt to head off a recession, the Fed. could loosen the money supply to accommodate the demand for credit, risking inflation.

The critical question remains whether the President and Congress can seriously attack the underlying cause of the trade imbalance--the bloated Federal budget deficit, which keeps real interest rates high and diverts private investment from more productive uses. MIT's Franco Modigliani, the 1985 Nobel prize winner in economics, has said: "Despite all the talk today of flagging American competitiveness, no measure--be it protectionism or fair trade, devaluation, foreign expansion or competitiveness -- will eliminate the trade imbalance unless we manage to reduce our fiscal deficit by about $150 billion."

Much of the debate about how to reduce the trade deficit has been couched in terms of economic nationalism and unfair foreign competitors. Many critics blame sneaky foreign nations who do not play fair. Recommendations have included closing American markets to them until they play by our rules; requiring they reduce their trade surpluses with the United States; or erecting quotas and tariffs against them. Proponents claim these measures would guarantee "managed trade" across a "level playing field." Improving American competitiveness, however, is not just a matter of reclaiming market share which foreigners have captured unfairly. Cosmetic solutions divert attention away from the more fundamental causes of the declining competitive position of American products in world markets.

The Traditional Approach to Trade Negotiations

As in Japanese kabuki theater, gestures and symbolism play an integral part in trade negotiations. U.S. officials indicate their concern about a problem and call for action from our trading partners. Reaction is often slow, or negligible. Strong, visible political pressure by the administration--a blunt tool for changing foreign governments' economic policies--is then applied in an effort to pry open foreign markets.

The protracted nature of government negotiations fuels growing frustration. Our trading partners respond with partial market-opening measures to mollify a disgruntled Congress. The current gaping $170 billion trade deficit fans protectionist sentiment and threatens to push this familiar pattern to new heights. This kabuki-like dance is repeated again and again in a series of well-known steps.

An American Double Standard?

Japanese experts who have been involved with the U.S.-Japan Economic Agenda have indicated to us that over-reliance on public pressure reduces U.S. credibility over time and raises mutual antagonisms. Many Japanese businessmen feel they are being increasingly talked about in almost subtly racist terms -- as a homogeneous mass of economic machines rapidly taking aim at the world.

U.S. pressure is particularly resented in Japan when it is perceived as an intrusion into issues normally considered domestic in scope. Resentment and distrust exist among some members of the Japanese government over what is viewed as an American double standard on free trade.

The New York Times reported that, "Of the $360 billion in goods this country imported in 1986, $80 billion, or 22 percent, was covered by some kind of special protection. In 1980 the figure was 12 percent; in 1975, 8 percent. Gary C. Hufbauer, Wallenberg professor of international finance at Georgetown University, has found that trade restraints cost consumers twice as much now as they did six years ago."(1/18/87) Hufbauer's study estimates our own trade barriers cost consumers $65 billion in 1985.

Many inside the Japanese government view protectionist trade proposals as acts of U.S. political muscle-flexing, designed to dictate the terms of international trade by American rules. While many Japanese agree that a certain degree of outside pressure is necessary to mobilize change in Japanese society, the feeling seems to be that to the United States, international economic cooperation means everyone else doing what Washington wants while the United States does exactly as it pleases. As I.M. Destler of the Institute of International Economics points out, "If anything, Japan has become a little less protectionist, and the United States a little more."

Because in Japanese culture, true feelings (honne) often take a backseat to public positions (tatemae), Tokyo policy makers are unlikely to confront Congress with this sense of growing national pride. Even if they did, it appears Congress is not in the mood to listen.

Beneath the finger pointing still lies a partnership that Ambassador Mike Mansfield frequently calls "the most important bilateral relationship in the world, bar none." The U.S. and Japan account for approximately one-fourth of the world's production and are responsible for over 50 percent of the world's overseas investment. Total trade between the U.S. and Japan exceeds trade between the U.S. and all European countries.

Policy makers on both sides of the Pacific must understand that the trade problem does not have adequate short-term solutions. Although extremely sensitive to their own local pressures, many Diet members underestimate how deep anti-Japanese sentiment could become in certain parts of America. It is in Japan's own best interest to prevent a deterioration of world trade.

It is irrational, however, for the United States to repeatedly jab Japan to remove trade barriers as we move toward barricading American markets. Expanding circles of protectionism will stagnate world trade as other nations retaliate against American-made exports and impose huge costs on American consumers.

Trade restrictions ease domestic competition and often translate into higher prices as American industry seeks to maintain profit levels. Restricting trade invites foreign manufacturers to move toward higher value-added production and higher prices to enable them to maintain earnings. A Brookings Institution study found that the Japanese voluntary export restraints on automobiles boosted car prices in the United States by an average of $2,500, while market share for the Big Three American auto manufacturers continued to decline.

A New Channel

It is our view that **many U.S. firms have become over-dependent on Washington to negotiate with foreign governments on their behalf.** There are limitations to the results to be gained from high-level talks among government representatives. Foreign bureaucracies, like our own, reflect their constituencies; these constituencies are more concerned with the primacy of their own national economic issues.

The private sector needs to become more actively involved in trade issues. This is not to say that formal, government-level negotiations should cease to have a significant role. U.S. government pressure exerted on our trading partners to open their markets to American goods and services responds to political needs on both sides of the trade table. However, more direct, private channels between American business and our foreign trading partners offer a number of advantages.

In stark contrast to the highly visible government trade negotiations, informal, behind-the-scenes communication avoids the glare of the press on both sides and the resulting pressures on negotiators to "save face." Increased private-sector involvement will help defuse the "public siege" mentality that often characterizes government-level trade negotiations.

A certain degree of trade tension is inevitable. The globe is fast becoming one marketplace. As economic interdependence increases, the number of potential stress points will multiply. Seventy percent of all the goods produced in the United States are in direct competition with goods from abroad.

Effective political leadership, however, requires the vision to look beyond short-term emotionalism and stop-gap solutions. The U.S. cannot afford to frame the issue in terms of "us" versus "them." The critical question is whether the U.S. will be able to work together with its trading partners to provide the economic leadership needed to prevent an erosion of world trade.

While we recognize the continued importance of government-level trade talks, we strongly believe more attention and resources should be devoted to encouraging private-sector involvement and less dependence on Washington to negotiate on their behalf. National legislation to improve U.S. international competitiveness is not a substitute for what companies can do to help themselves.

Understanding foreign markets and the ways foreign government policies affect business interests is an increasing source of competitive advantage. Intense competition magnifies the importance of understanding the changing rules of the game. Access to accurate and timely information can make the difference between the front-runners and the also-rans in foreign markets.

Other countries, however, with Japan a notable example, traditionally have done a better job monitoring Washington's pulse and tracking U.S. legislative and regulatory developments than U.S. firms have done abroad. The Japanese have spent years studying the United States and understanding its administrative, bureaucratic, and policy making structures. For many cultural, historical, and social reasons, it has been difficult for U.S. firms to do the same in Tokyo.

America's international firms need to learn more about the operation of foreign markets. U.S. companies need to work patiently behind the scenes--directly with foreign government officials and industry representatives. These contacts could help to build coalitions supportive of strengthening international trade, in each of our major trading partners, allowing individuals, companies and governments to work together in a spirit of conciliation rather than confrontation.

One example of how this can be achieved is illustrated by an new program at the Carnegie Council. We are initiating a series of reports which will identify and analyze emerging policy developments in Japan. Our aim is to help American companies stay on top of changes in the Japanese market and target opportunities generated by policy changes. The reports will emphasize how changing Japanese policies shape the market conditions American firms face in Japan.

We believe The U.S.-Japan Economic Agenda, bringing together private- and public-sector leaders in the United States and Japan and building private constituencies in both countries to promote reciprocity of trade opportunities, provides a successful example of how private sector efforts can supplement formal government trade negotiations.

We want to thank the committee for the opportunity to present our views.

TESTIMONY OF RICHARD T. O'CONNELL
PRESIDENT OF THE CHOCOLATE MANUFACTURERS ASSOCIATION AND THE NATIONAL CONFECTIONERS ASSOCIATION

TO THE RECORD OF HEARINGS ON H.R. 3
HOUSE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS

MARCH 5, 1987

Chairman Gibbons, Members of the Subcommittee:

The United States confectionery industry, represented by the 118 companies who are members of the Chocolate Manufacturers Association and the National Confectioners Association, urges the Committee to include among its trade policy objectives the targeting and elimination of the grossly inequitable foreign tariffs which are the single greatest impediment to the growth of U.S. confectionery exports.

Reciprocity is a term often used to summarize the objectives of U.S. national trade policy. American exports should have the same opportunity in foreign markets as imported goods have here. Rarely is the absence of reciprocity more marked than in international confectionery trade. The U.S. is an open market. Tariffs of 5% and 7% are among the lowest in the world and nontariff barriers are absent. In return for free access to the U.S. confectionery market, Japan maintains highly protectionist tariffs of 20% on chocolate and 35% on sugar confectionery. Canadian duties average 13%; European duties, 15%. Taiwanese tariffs are 25% on chocolate and 57.5% on sugar confectionary. The Korean duty on chocolate is 30% and 25% on sugar confectionery. Most of these nations enjoy substantial trade surpluses with the U.S. and yet maintain unreasonably high tariff barriers to American confectionery exports.

The current depreciation in the value of the dollar that will help the overall competitiveness of U.S. exports is not the answer when overseas sales are suppressed by tariff and nontariff barriers. The U.S. trade deficit reached an all time high of $170 billion last year despite a 60% decline of the dollar against the yen and 30% to 40% against European currencies. One third of the new debt is with one country - Japan. I suggest to the Committee that the decline in the dollar/yen value over the past 18 months has had so little impact because trade with Japan is essentially a one-way street.

Except for raw material imports necessary to run Japan's manufacturing sector, Japanese imports are carefully controlled through tariffs and other restrictive trade barriers. These barriers limit U.S. exports. Consequently, Japanese manufacturing firms are able to export their goods into an open U.S. economy which is consumer oriented, but efficient U.S. manufacturers are unable to compete with their Japanese counterparts because of Japan's protective measures.

A case in point is the chocolate manufacturing industry. The U.S. chocolate and sugar confectionery industry is one of the most efficient in the world. It is capital intensive with highly sophisticated manufacturing facilities.

The industry's consumption of sugar and milk is vital to this nation's agricultural sector. Another important raw material, cocoa, is sourced from developing nations of Africa and South America and in the near future the State of Hawaii will produce the first domestic cocoa crop.

In spite of technological and natural resource advantages, U.S. chocolate and sugar confectionery exports to Japan still constitute only one percent of the Japanese market after a decade of determined effort. Further, the 20% duty (C.I.F. value) on imported chocolate confectionery combined with highly restrictive rules regarding promotion and discounting of products at the wholesale and retail levels has limited U.S. exports to an average $15 million in a $2 billion market.

What are the problems that keep an efficient U.S. confectionery industry's exports to Japan at a minimum? And, what can Congress do to secure trade reciprocity from Japan and better position American exporters to take advantage of the substantial growth in the Japanese confectionery market that is expected in the decade ahead?

First I would ask that the Committee not abandon the priority of eliminating overseas barriers, especially tariffs, in hopes a realignment of the dollar will offset the damage of these barriers.

Japan's 20% C.I.F. tariff on chocolate added on to ocean freight and insurance costs, which total 7 to 10%, means that U.S. chocolate manufacturers must be 30% more efficient to compete with the big five Japanese chocolate companies. Even then, new market entrants or manufacturers introducing new chocolate products are not allowed to offer coupon discounts of more than 3%, i.e. 1.2 cents off on a 40 cent bar; cannot give a premium offer with purchase worth more than 2%; cannot pass out leaflets at the store front; cannot advise potential customers to "ask your store" if they have the product; and cannot offer samples larger than an amount which allows the consumer to know the flavor.

Given the tariff and the trade restrictions, the yen/dollar value would have to fall to 110-120 from the current 152 in order for U.S. chocolate manufacturers to compete on a level playing field with the Japanese. It is doubtful this revaluation will be allowed because of the economic difficulties it would cause in Japan during the next few years.

Consequently, the only hope that American confectionery manufacturers have of penetrating a growing, dynamic market is for Congress and the Administration to maintain pressure on the Japanese to reduce confectionery tariffs to the same level as the United States' rates of 5% and 7%.

To assure that achieving trade reciprocity will not depend entirely on unilateral concessions by our trading partners, we support an extension of the President's tariff and nontariff negotiating authority as it is proposed in H.R. 3, Subtitle C. Trade Negotiating Objectives and Authority.

Negotiating authority could be a useful tool in freeing some of the bilateral tariff issues such as Japan's tariff on chocolate that have become intractable despite continuous pressure from Congress and the Administration. Progress on this and other matters would contribute a positive momentum for the new round and help alleviate concerns in the business community that improvments in market access will be suspended for the duration of GATT multilateral trade negotiations.

The U.S. confectionery industry has already waged a long campaign to open lucrative foreign markets. Our progess can be measured not just in declining foreign tariffs such as 75% to 25% in Taiwan and 55% to 30% in Korea but to an average 40% increase in export sales. We ask that Congress provide the President and lead trade policy agencies with the authority to secure for American confectionery manufacturers the same opportunity for their products overseas as imported confectionery receives in the United States.

STATEMENT OF THE COALITION TO PROMOTE AMERICA'S TRADE

The Coalition to Promote America's Trade is an ad hoc organization of American petrochemical, agricultural and other companies that was formed in early 1984 to support fair and free trade and to oppose passage of so-called "natural resource subsidy" trade legislation. In the present hearing, the Coalition wishes to emphasize two major points in opposition to the natural resource provision (section 135) of H.R. 3, the House omnibus trade bill. 1/

- Recent events have shown that the proposed amendment of the countervailing duty law is totally unnecessary. The major trade cases that triggered the natural resource proposal have been resolved favorably under existing U.S. law, which has been consistently applied more aggressively and favorably to complaining U.S. industries. Morover, the newly-convened Uruguay Round of GATT negotiations specifically includes natural resource pricing and trade as issues to be considered.
- In attempting to cast the natural resource issue as one involving unfair pricing and subsidies, the natural resource proposal seriously misinterprets the purpose of the unfair trade laws. As a result, its implementation would give rise to grave economic and trade-related repercussions.

I. AMENDMENT OF THE COUNTERVAILING DUTY LAW TO ADDRESS THE NATURAL RESOURCE QUESTION IS UNNECESSARY

The proposed natural resource amendment of the countervailing duty law is unnecessary for three reasons:

- Existing countervailing duty and antidumping laws have been applied by the Department of Commerce in a more stringent manner in cases involving natural resources.
- Other existing U.S. trade laws -- specifically section 301 of the Trade Act of 1974 -- also provide a remedy for the practices complained of by the proponents of the legislation.
- Multilateral negotiations on trade in natural resources have recently commenced in the Uruguay Round.

1/ For a fuller review of the arguments against such legislation, see Barshefsky, Diamond & Ellis, "Foreign Government Regulation of Natural Resources: Problems and Remedies Under United States International Trade Laws," 21 Stanford J. Int'l L. 29 (1985).

A. Existing Countervailing Duty and Antidumping Laws Provide Substantial Relief to Complaining U.S. Industries

Recent developments have shown that there is no need to amend the countervailing duty law as proposed in the natural resource provision. Three major natural resource pricing cases -- involving ammonia, carbon black, and cement from Mexico, Canadian lumber, and urea products from non-market economy countries -- have been the focus of the proponents of the legislative proposal. These cases, however, show that (1) the facts underlying the concerns of the legislation's proponents have changed, and (2) Commerce has applied existing law more stringently, so that such cases are resolved more favorably to the complaining U.S. industries.

Natural gas from Mexico. The price of Mexican natural gas has risen in recent years to levels essentially equal to those prevailing in the United States and elsewhere in the world. Thus, the underlying concern that Mexican domestic purchasers of natural gas obtain supplies at prices lower than the prices available to their competitors in the United States, is simply no longer true.

Ammonia. Mexico is no longer a major exporter of ammonia to the United States. A chief source of imported ammonia is Trinidad and Tobago, whose major producer is 50% U.S. owned, and thus not subject to the proposed legislation.

Carbon black. In the case concerning Mexican carbon black, the Court of International Trade rejected the Commerce Department's original "general availability" test, by which the Department had determined that because Pemex provided the inputs for carbon black at uniform prices to a variety of purchasers throughout the Mexican economy, its low price did not constitute a countervailable subsidy. Cabot Corp. v. United States, 620 F. Supp. 722 (1985). In subsequent administrative reviews of the case, Commerce has responded to the Cabot decision by adopting a general availability standard more favorable to U.S. petitioners, and it has found that a countervailable subsidy exists in Pemex's pricing of carbon black inputs.

Cement. In the Mexican cement case, the U.S. petitioners lost on the injury question before the U.S. International Trade Commission. This result, of course, would not in any way be affected by the proposed legislation, which explicitly incorporates the injury test.

Canadian lumber. Recently, controversy over the Canadian lumber case has been a driving force behind the enactment of natural resource legislation. But here too, Commerce has applied the more stringent general availability test, and has determined that countervailable subsidies were provided through the pricing of stumpage rights by the Canadian government. Under the new legal standard, Commerce preliminarily found duties of 15% on imports of Canadian lumber products into the United States. Ultimately, the case was settled on the basis of duties found by the Department.

Non-market economy imports. In the investigations involving non-market economy urea, substantial dumping margins -- ranging from 53% to 144% -- were preliminarily imposed on the three countries involved (East Germany, Rumania, and the U.S.S.R.).

The outcomes of these cases show that the facts do not support the proposed legislation, and the law as applied by the Department of Commerce has become consistently more favorable to the concerns of U.S. industries. There is simply no need for the proposed natural resource legislation.

B. Existing Remedies Under Section 301

In addition to the vigorous enforcement of the countervailing duty and antidumping laws, other provisions of present U.S. trade law -- specifically section 301 of the Trade Act of 1974 -- also provide a remedy for the practices complained of by proponents of the natural resource legislation. As is evident from the natural resource debate, the proposal is intended not merely to remedy alleged foreign pricing improprieties, but also to gain access for U.S. producers to foreign natural resources at low internal prices. The proposal demonstrates the importance of access by defining a "resource input subsidy" to exist only where the price of the resource "is not freely available, by reason of government regulation or control, to United States producers for purchase of the input product for export to the United States." An effective natural resource remedy is thus one through which access may be achieved while, at the same time, providing for the imposition of duties or other forms of trade relief in the event access is denied.

The access and pricing issues involved in the natural resource debate are concerns that can be specifically addressed under section 301 of the Trade Act of 1974. The availability of a remedy under section 301 is especially clear when one examines the amendments to that law that were enacted in October 1984 -- amendments that make explicit the ability of the United States to attack the type of practices at issue here. For example, the law now defines the term "commerce" to include "foreign direct investment by United States persons with implication for trade in goods and services." And the definition of the term "unreasonable" has been expanded to include acts or practices that deny "market opportunities" or "opportunities for the establishment of an enterprise" by United States parties in the foreign nation. These provisions of section 301 thus have as their aim the opening of foreign investment and access opportunities for U.S. producers -- precisely the concerns addressed by the natural resource proposal. Given the obvious applicability of section 301 to the pricing and access issues raised by proponents of the legislation, the proposed change in the countervailing duty law, which would have dramatic negative effects on the U.S economy and trade (as discussed below), is simply unjustifiable.

C. Multilateral Negotiations on Natural Resources

Because the proposal would effect a significant change in the United States' and the international community's understanding of proper government regulation of natural resources, successful long-term resolution of the issues involved can only be through multilateral trade negotiations. In fact, trade in natural resources is a specific agenda item in the recently-convened Uruguay Round of GATT negotiations. It thus makes no sense for the United States to act unilaterally on this issue, in a manner that may well undermine the possibility of attaining a GATT consensus on the issue, or clash with the conclusions reached by the GATT. Far more sensible would be to await GATT resolution and then to enact any necessary implementing legislation.

II. AMENDMENT OF THE COUNTERVAILING DUTY LAW TO ADDRESS THE NATURAL RESOURCE QUESTION IS ILL-ADVISED

The thrust of the natural resource proposal is to declare as countervailable the sale of foreign government-regulated natural resources to local purchasers at prices below what is termed a "fair market price" and below the price at which the resource is sold to United States purchasers for export to the United States. The amount of the countervailable subsidy would be the difference between the foreign country's domestic price and the "fair market price" of the resource. The subsidy would be applied against products made from the resource in the foreign country and exported to the United States.

On its face, it is clear from the description of the proposal that it is not intended to attack the provision by governments of natural resources at prices below the fully allocated cost of production. Sales below cost can be effectively addressed under the current U.S. antidumping law. Nor is the proposal meant to attack the establishment of uneconomic plants or other commercially unreasonable investments by foreign governments. Those may already be challenged as domestic subsidies under the present countervailing duty law. Rather, the proposal would radically expand the countervailing duty law to treat as countervailable subsidies a country's natural cost advantages.

Under the bill, a country with a cost advantage in the production of a natural resource cannot provide that resource to its domestic downstream users at a price less than so-called world market or U.S. prices for the same resource. Reduced to its most essential element, this legislation says that no country can utilize a natural cost advantage in the development of natural resource-based industries without running afoul of the U.S. countervailing duty law.

The notion that a natural cost advantage constitutes a countervailable subsidy turns the countervailing duty law upside down. Our unfair trade laws are aimed at producers without natural cost advantages -- inherently high-cost non-competitive producers -- who, by means of government subsidies, are able to produce and sell their products at low prices. Natural resource legislation is the antithesis of this framework. The goal of this legislation is to strike at countries that have a genuine cost advantage in the production and development of particular natural resources. Under the bill, it is the exercise of that cost advantage that gives rise to a countervailable subsidy.

This radical and extraordinary expansion of the countervailing duty law cannot be justified on economic or policy grounds. The countervailing duty approach suffers from the following defects:

- The legislation expects governments to behave in a manner different from private enterprises in making pricing decisions.
- The proposal conflicts with the internationally accepted view of the scope of legitimate government activity.
- The proposal condemns government activities in the regulation of a nation's natural resources similar to those that have routinely been undertaken by the United States.

- The proposal would invite retaliation against United States exports by our trading partners, or the enactment of "mirror" legislation.
- The proposal is impossible to embody in predictable, enforceable legislation.

A. The Proposal Expects Governments to Behave in a Manner Different From Many Private Enterprises in Making Pricing Decisions

As described above, the proposed legislation attacks sales of a natural resource at prices which, while above cost, are below world-market or U.S. prices, i.e., at levels lower than the immediate short-term profit maximizing price. The trade laws, however, have never been interpreted to compel enterprises -- private or government-regulated -- to operate at a specified level of profit, let alone engage in short-term rather than long-term profit maximization.

This extraordinary expansion of the countervailing duty law is justified by proponents of natural resource legislation as a way to restrain the behavior of foreign governments by limiting them to actions taken by private businesses. The assumption made is that only one market strategy is available to a private company -- that of maximizing short-term profits. In fact, this assumption is often wrong. In forcing governments to pursue short-term profit maximizing strategies as the only way in which downstream products can "fairly" be sold on world markets, the proposal expects governments to behave in a manner that private enterprises often do not satisfy.

In contrast to the simplistic view of private business behavior embodied by the natural resource proposal -- quick sales at the highest price -- diverse market conditions and different attitudes toward risk and long-term growth may lead companies to pursue radically different marketing strategies. Varied strategies are often adopted by U.S. companies; indeed, these strategies are required by the diversity of the market place. To penalize foreign governments for pursuing similar long-term strategies simply imposes limits on them which U.S. companies have never had to meet. Similarly, to define as an "unfair practice" the failure to reap maximum short-term profits on sales made abroad sets an extremely dangerous precedent which could be used to attack as "unfair" our own U.S. exports.

B. The Proposal Is Contrary to the International Consensus as to What Constitutes a Subsidy and Conflicts with U.S. Development of its Own Natural Resources

Not only is the natural resource proposal based on an unrealistic view of private business conduct, but it also ignores the internationally accepted nature of the government activities involved. Governments are quite properly motivated by broad general welfare considerations that may result in behavior different from that of a private company. One means by which governments have attempted to improve their nations' general welfare is by developing their natural resources.

The international community has agreed -- and the United States has firmly supported the proposition -- that such government actions are exempt if the benefit provided is generally available to all citizens. Both the GATT Subsidies Code and U.S. law recognize that to be countervailable, the government benefits must be sector specific in nature. Generally available benefits -- such as U.S. control of oil prices in the 1970's -- have been staunchly defended by the United States as non-countervailable.

Generally available benefits may take myriad forms. For example, a government may distribute part of the income generated from sales of a natural resource directly to its citizens, or use such funds to provide roads, schools, hospitals or food. Alternatively, the government may provide a resource which it owns directly to its citizens at low prices or, by regulation, require that the resource be sold at low prices. The United States has frequently engaged in this type of resource distribution. In a study entitled, "The Subsidization of Natural Resources in the United States" (Feb. 5, 1986), the Congressional Research Service set forth the U.S. government's substantial and pervasive support of the development of our own natural resources. These programs have cost the U.S. government billions of dollars in outlays and foregone revenues in a diverse range of industries, such as:

- Federal irrigation water. Water offered by the government to users at prices below cost provided a potential subsidy value in 1982 (the most recent year for which data were available) of $1 to $1.6 billion, or 14 to 22 percent of the value of the crops irrigated in that year alone.

- Livestock grazing fees on federal lands. The low fees charged by the government provided an estimated 77.5 percent subsidy when compared to private grazing fees.

- Hydroelectricity generated at federal dams. Prices for power sold at Bonneville alone were calculated to be as much as 33 percent below the prices charged by private utilities.

- Hard rock minerals. Depletion allowances for copper alone range from $0.3 to $1.5 billion, exclusive of the value of the federal land sold at below market prices to the mining industry.

- Uranium and coal. $5 to $7 billion in government funds were provided to construct and operate enrichment plants, and tax breaks for the coal industry have totaled an estimated $1 billion over a five-year period.

- Oil and natural gas. As of January 1985 an estimated 40 percent of domestic natural gas reserves remained controlled at below market rates. Tax and other benefits to the oil industry have been enormous.

These programs are similar to those of foreign governments that would be subject to attack under the natural resource proposal before this Committee. And these programs, among others, would be natural targets for foreign "mirror" legislation.

The view that such government programs have never been considered countervailable subsidies is made explicit by the 1984 Congressional debates on the extension of the contracts to provide power generated at the Hoover Dam at prices far below market rates. Numerous defenders of the proposal -- of both parties and in both Houses of Congress -- argued that the contracts would allow the government to charge enough to recover costs and perhaps earn some profit (though certainly not the highest possible profit). More fundamentally, they noted that throughout United States history the role of government in the development of this nation's resources has never been that of a profit-maximizing entity.

The bill reauthorizing below-market pricing of hydroelectric power from the Hoover Dam passed both Houses of Congress by substantial margins. The numerous statements made in support of that legislation apply with equal force to the provision of natural resources by foreign governments to their people:

- "The primary purpose of the Federal hydropower program is not to maximize revenue at taxpayer's expense but to sell power at the lowest possible rates . . . and recover the Government's investment and operating expenses." (Rep. Jerry Patterson, D-Calif.)
- "[T]he whole concept of public power was one in which we said Government was not going to make a profit on the power." (Rep. Allan Swift, D-Wash.)
- "There is no subsidy involved. What is involved here is that the whole philosophy of Federal power production is that [sic] get cost recovery." (Rep. Mo Udall, D-Ariz.)
- "The Federal Government is not in the power business to make a profit -- but to stimulate private development of energy resources. The purpose of the Federal power program has never been to maximize revenue but to sell power from public projects at the lowest possible rates that will recover the Government's investment and pay all operating expenses. The projects should pay their own way -- and Hoover does." (Rep. Howard Berman, D-Calif.)
- "There is no subsidy inherent in the concept of tying the price of power to its cost of production. This is the way 98 percent of all power in America is priced." (Sen. Chic Hecht, R-Nev.)
- "The Federal Government is not in the business to make a profit. . . . [I]n each of [its] investments we have done it at the lowest possible price in order to give to the people of this country . . . an opportunity to better themselves. . . .

  [The] policy which has been held in this country, in my view, for

> virtually all of its 200-year history . . . [is] to build this infrastructure for what it costs and to regain those costs, but not to make a profit beyond that. . . . I think it has been a good policy, it is a good policy, and will continue to be a good policy." (Sen. Daniel Evans, R-Wash.)

In short, the regulation and development of a nation's natural resources have long been recognized by the United States as falling within the legitimate scope of government activities, as to which countervailing duties do not apply. No compelling argument has been advanced to alter this view.

C. The Proposal Will Adversely Affect U.S. Trade and the U.S. Economy, and Is Virtually Unadminstrable

Enactment of the natural resource proposal could significantly impede U.S. trade and harm the U.S. economy. Trade disruption would occur not only because of the potential retaliatory actions that other countries might take in response to such legislation, but also because of the effect that these proposals would have on existing market relationships.

Retaliation against U.S. exports would be likely. As noted earlier, the U.S. countervailing duty law provides for a sector specificity test in determining whether a particular domestic subsidy is countervailable. Article 11(3) of the GATT Subsidies Code, enumerating specific examples of possible "domestic subsidies," specifies that such subsidies are those "granted with the aim of giving an advantage to certain enterprises," and are "normally granted either regionally or by sector." These references form the basis for the explicit requirement in U.S. law that only domestic benefits "provided to a specific enterprise or industry, or group of enterprises or industries," are countervailable.

In 1984, the Administration, after close study, concluded that in light of the sector specificity rule the natural resource proposals considered in the 98th Congress constituted "a drastic and unilateral departure from the internationally accepted definition of a countervailable subsidy," in violation of the GATT, and that enactment of such a provision "would subject the United States to a GATT challenge, which we would almost certainly lose. The result could be GATT authorization to retaliate against U.S. exports." The Administration reiterated its position in 1985 in hearings before this Subcommittee on the natural resource subsidy provision in H.R. 4800, which was identical to the present proposal.

Likely targets for retaliation would be our own major exports, such as agricultural and textile products. Indeed, the Congressional Research Service, as noted above, described numerous U.S. government programs involving billions of dollars of benefits to producers using our natural resources. Exports benefiting from these programs would be clear targets for retaliation if a natural resource proposal were to be enacted. And even if the natural resource proposal were to survive a GATT challenge, it would be a pyrrhic victory, for foreign governments would then have every encouragement to enact their own "mirror" legislation.

Key U.S. exports would become less competitive on the world market. The adverse impact of the natural resource proposal on U.S. exports extends far beyond GATT retaliation or the enactment of mirror legislation. Many U.S. industries use basic petrochemical and other natural resource-based products imported from other nations to make more advanced products, which are then exported from the United States. American agricultural interests, petrochemical industries, and the forest products industry, to name just a few, all utilize natural resource-based products to produce downstream goods for export. If the prices of the basic products are driven up by substantial duties, the prices of the exports of the finished products will also rise, severely undermining or destroying their competitiveness in world markets. The marketplace would thus "retaliate" against U.S. exports, even if our trading partners did not.

The resulting economic harm would penetrate broad segements of the U.S. economy. According to testimony by Wharton Econometrics before this Subcommittee in June 1985, passage of the proposed natural resource legislation would cause a net incease in unemployment in numerous sectors of the U.S. economy -- including agriculture, manufacturing, mining, finance and services -- in every state of the nation. Even without retaliation by our foreign trading partners, for example, economy-wide job losses would reach 275,000 while net job gains in the protected industries would be at most 9,000; net U.S. farm income would be reduced on average by $889 million per year through 1994; total real U.S. output would be reduced by $79.7 billion over the same period; consumer prices would rise by 9.5 percent; and the federal debt would be raised by $10.5 billion by 1994. Retaliation by foreign countries would only exacerbate the proposal's negative economic impact.

The proposal would seriously jeopardize U.S. relations with developing countries. The natural resource proposal would hit hardest at trading partners of the United States in the developing world, where regulation of natural resources is frequently an essential part of long-term economic and social development. Indeed, the GATT recognizes the difficult economic situation of the developing nations, by allowing them greater commercial latitude without the threat of retaliation. And the United States for decades has repeatedly urged those nations to rely on the development of their natural resources to diversify their productive capacity, improve their financial position, and enhance the welfare of their people. Enactment of the proposed legislation would clearly undermine the substantial progress made by these countries.

United States exporting industries would also be substantial losers if duties were imposed on products from the developing world. These countries are major purchasers of United States exports: for example, some forty percent of total U.S. agricultural sales now go to developing countries, and these countries are the key growth market for future U.S. agricultural sales. It is simply not in the interest of the United States to jeopardize substantial long-term trading relationships with these countries, as would be the case were this legislation enacted.

The proposal is virtually unadministrable and compliance impossible. The proposal sends a "damned if you do, damned if you don't" signal to foreign governments and producers. Under present U.S. law, the foreign exporting industry would run afoul of the antidumping statute if the natural resource in question was exported at a price lower than the domestic price of that resource. At the same time, however, under the natural resource proposal, such producers would also be committing an "unfair" practice if the export price of the resource were greater than the price charged in the domestic market. Compliance with U.S. trade laws would thus be virtually impossible for affected foreign exporters, however the natural resource was priced.

Moreover, the proposal employs terms which are impermissibly vague or impossible to quantify. For example, it specifies certain factors to be used in determining "fair market value," including "market clearing price," "export price," and "generally available" prices in "world markets." Although understandable concepts, such terms are not amenable to precise calculation. The bill provides no guidance as to their relative weight, or the manner in which they are to be balanced against the domestic price of the resource. 2/ The very vagueness inherent in the concepts employed in the proposal underscores the fact that no foreign country, however it priced its resources, could be assured that its practices would comply with U.S. law. This unpredictability is itself a barrier to trade.

D. An Injury Test Does Not Mitigate the Proposal's Serious Flaws

The proposal provides an injury test, according to which injury must be demonstrated by the petitioning U.S. industry before countervailing duties may be imposed, even though for all other purposes under the countervailing duty law the foreign nation may not be entitled to an injury test. While the provision of an injury test may mitigate the proposal's impact in specific cases, it does not address and thus cannot mitigate the underlying conceptual problems that plague the proposal. Nor can the presence of an injury test resolve the practical problems with the proposal, such as its anticompetitive effects, negative market impact on U.S. consumers and export business, and impossibility of administration and compliance.

2/ As the International Trade Commission stated in its section 332(b) investigation of natural resource pricing, "[f]or a nation that has no current viable natural gas export market, the domestic price cannot be compared to the world natural gas price." U.S. International Trade Commission, Potential Effects of Foreign Governments' Policies of Pricing Natural Resources (Final Report on Investigation No. 332-202 Under Section 332(b) of the Tariff Act of 1930) at xv (May 1985).

Statement for the Record
on Behalf of
Communications Industry Association of Japan (CIAJ)

Mr. Chairman and Members of the Subcommittee:

This statement is submitted on behalf of the Communications Industry Association of Japan (CIAJ). CIAJ is comprised of over 200 corporations, including a number of American firms which manufacture communications equipment. The ability of telecommunications firms, whether Japanese, American or European, to sell their products on a global basis is dependent upon open markets around the world. For this reason, CIAJ has been an advocate of deregulation and greater transparency in the Japanese telecommunications market. Since the initiation of the Market-Oriented-Sector-Specific ("MOSS") process, the opportunities in Japan for U.S. telecommunications companies have increased substantially. Unfortunately, these opportunities would be endangered by Title II of H.R. 3, short titled the "Telecommunications Trade Act of 1987," (hereinafter "Title II").

Title II is based on the premise that the passage of specific legislation concerning telecommunications trade is necessary for the United States to achieve progress in international telecommunications negotiations. However, the recent experience of the United States in telecommunications negotiations with Japan demonstrates that this premise is without merit, and that existing U.S. trade laws are adequate to achieve continued progress in the telecommunications sector.[1]

In the short period since the inception of the MOSS process in 1984, the participation of U.S. telecommunications companies in the Japanese market has increased dramatically. U.S. investment in offices and facilities has increased, exports have grown, and joint ventures and technological cooperation among U.S. and Japanese companies have become commonplace.

As discussed below, the mandatory retaliation requirements of Title II will impede rather than assist U.S. efforts to open markets abroad. Further, the sectoral reciprocity approach to trade negotiations set forth in Title II will endanger the framework of tariff bindings and trade concessions achieved over the past 30 years.

Progress Achieved through the MOSS Process

Liberalization of the Japanese telecommunications market began in 1984 when, motivated by the same desire for competition and innovation that led to U.S. telecommunications deregulation, the Japanese Diet enacted legislation which transformed Nippon Telephone and Telegraph (NTT), formerly a government owned monopoly, into a privately owned company. At the same time, the Diet enacted legislation which authorized private firms to compete directly with NTT in providing transmission services, and permitted unlimited entry into the lucrative and expanding value added networks market.

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[1] The authority provided the President under Section 301 of the Trade Act of 1974, as amended, enables the President to take whatever action he deems appropriate in response to acts, policies or practices which, among other things, burden or restrict U.S. commerce. This broad grant of authority and ever-present threat of retaliation has served as useful leverage in negotiations between the United States and its trading partners. As discussed, _infra_ at page 11, the mandatory retaliation requirement contained in Title II would reduce the President's flexibility, and discourage meaningful negotiations with foreign governments.

Following the enactment of this legislation, the Japanese Government worked under the MOSS process with U.S. Government officials and industry representatives to finalize ministerial and cabinet ordinances which implemented the new legislation. The Japanese Government accommodated the U.S. Government's request for modifications of the ordinances as they relate to standards and procedures for testing and approving equipment, and the registration of common carriers. The Japanese Government also agreed to enable U.S. firms to participate in the development of future rules and certification procedures. Progress was also achieved in the area of radio equipment and services market, and in particular, the growing field of mobile telephones and paging systems.

In summarizing the achievements in the telecommunications area under the MOSS process, Secretary of State George Schultz said: "Our efforts in the MOSS telecommunications sector, aiming at the liberalization of the telecommunications terminal equipment and network services market and the radio equipment and services market in Japan have achieved remarkable success, substantially resolving all the problems raised in the course of discussions."

In the view of U.S. telecommunications experts, through the MOSS process Japan has achieved regulatory parity with the United States in essential areas of product standards and certification.[2] Relative to what is happening elsewhere in the world, Japan's effort to liberalize its telecommunications market has exceeded that of any other country except the United States.[3] As a result, Japan and the United States stand shoulder-to-shoulder in their commitment to open and fair trade principles in this area.

The reforms adopted by Japan with respect to its regulations and standards, however, did not guarantee an increase in U.S. participation in the Japanese market. After the MOSS process, U.S. officials observed that the true test of openness of the Japanese telecommunications market was "whether the cash registers would ring", or, in other words, whether the sales of U.S. companies in the Japanese market would increase.

It would take some time for the liberalization of the Japanese market to take effect. Part of the process involved raising the level of confidence of U.S. companies in their ability to crack the Japanese market. For without that confidence, U.S. companies were unwilling to make the necessary investment in sales efforts to be successful in the Japanese market. Slowly, confidence levels have risen, and now, three years after the initiation of the MOSS process, encouraging results have begun to emerge.

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[2] A recent analysis by the Federal Communications Commission (FCC) Common Carrier Bureau of terminal equipment approval in Japan concludes that "the Japanese program like the FCC's . . . is now limited to preventing harm to the network."

[3] Edmund Fitzgerald, President of Northern Telecom, which has had the experience of seeking to penetrate both the U.S. and the Japanese markets, has stated that the time and effort required to mount a successful sales effort in each market is now about the same.

Recent Developments in the Japanese Telecommunications Market

U.S. telecommunications equipment exports to Japan in 1986 increased by 31.4% over U.S. telecommunications exports to Japan in 1985. At the same time, U.S. imports from Japan in 1986 increased only 3.9% over 1985 levels.[4] While the U.S. deficit in telecommunications equipment remains at over $2.5 billion, the trend has begun to move in the proper direction, and over time, the sectoral deficit should shrink significantly.[5]

While the trade data shows a significant improvement in U.S. sales to Japan in dollar terms, it does not reflect the fact that the nature of U.S. sales to Japan are increasingly of the sophisticated "core equipment type".

This trend began in 1986 when NTT announced the award of a contract to Northern Telecom for sophisticated switching equipment that will be manufactured in North Carolina. Although the $250 million contract is important for its size alone, the sale of this "core" type equipment also will open the way for additional sales in the future and will serve as the basis for U.S. expansion into the market.

Additional sales in 1986 by U.S. firms included a contract by Ford Aerospace to sell $200 million in satellite equipment to Space Communications of Japan, and RCA's Astro - Electronics Division's agreement to design and manufacture major subsystems for the S-3, Japan's third generation direct broadcast satellite. In 1986, SEICOR, a joint venture between Corning Glass Works and Seimens, became a supplier of optical fibre cable to Daini Denden Inc., and DSC Communications concluded a contract for the sale of sophisticated switching equipment to Daini Denden Inc.

Purchases by Japanese firms in 1986 also included sophisticated PBXs, multiplexers and key systems from Rolm, AT&T, IBM and Northern Telecom.

Perhaps the most encouraging development in the Japanese market in the past year has been the rapid increase in the number of U.S. companies which have established offices or invested in facilities in Japan. Recently, CONTEL and Northern Telecom opened branch offices in Japan to facilitate equipment sales. Two smaller U.S. companies, Tekelek, a manufacturer of test equipment, and V-Band Systems, a manufacturer of terminal equipment, have also established offices in Japan.

Tie-ups between U.S. and Japanese companies have also increased dramatically in the past year, with AT&T and IBM among the most active. AT&T has entered in joint ventures with Toshiba and Ricoh in the equipment area, and with the Industrial Bank of Japan, Fujitsu and 16 other Japanese corporations in value added networks. IBM, through its Rolm subsidiary, has entered into equipment sales agreements with Tateishi Electric and Mitsubishi Electric. Sperry Corporation has entered into a research and development and production agreement with Hitachi. Unysis, NCR, Control Data, Interfield and General Electric have all entered the Japanese market in the value added services area.

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[4] Based upon data compiled by the American Electronics Association using SIC 366, with a yen-dollar conversion at the time of transaction. In dollar terms, U.S. exports to Japan rose from $226 million in 1985 to $297 million in 1986. Japanese exports to the U.S. rose from $2765 million to $2875 million during the same period.

[5] The current trend in which U.S. exports to Japan are growing at a faster rate than Japanese exports to the U.S. is relatively recent, and can be attributed to the effects of the MOSS process and unilateral steps taken by the Japanese Government. For example, from 1983 to 1984, U.S. exports to Japan increased by only 1.04% (in dollar terms, from $192 million in 1983 to $194 million in 1984), while Japanese exports to the U.S. jumped by more than 49.4% (in dollar terms, from $1391 million in 1983 to $2079 million in 1984).

Other U.S. companies which have entered into various sales or distribution agreements in Japan include Telematic, a manufacturer of "packet" switching systems, Multitech Systems, a manufacturer of modems for personal computers, and Meta Software, a manufacturer of circuit simulation software packages.

Altogether, more than 30 U.S. telecommunications companies are actively doing business in Japan. This number will continue to grow given the technological capability of U.S. firms and their increasing confidence in their ability to penetrate the Japanese market.

Title II would Endanger the Progress Achieved in the Japanese Market

Unfortunately, the promising results for U.S. firms described above could be endangered by the mandatory retaliation requirements of Title II. Section 206 of the Bill is clearly targeted at Japan, the only country which currently has entered into an agreement with the United States concerning telecommunications trade. Section 206 would require the President to retaliate against Japan within 18 months if the President determined that Japan denied competitive market opportunities to U.S. firms. The Bill mandates that the President base this determination, in large part, on whether the actual level of U.S. sales are commensurate with levels reasonably anticipated to flow from concessions made to the United States. This standard is a complete departure from internationally accepted norms. If other countries chose to adopt this standard, unilateral retaliation could be taken by a country whenever that country's level of exports in any particular sector were below the level "reasonably anticipated to flow from trade concessions". This arbitrary standard would lead to successive rounds of retaliation and counter-retaliation on a global basis.

Under Title II's "level of sales standard", even if a country takes steps to completely open its market, it could still face retaliation. Section 206 does not account for the fact that the success of U.S. firms in foreign countries is dependent upon the amount of time, effort and investment made by those firms in foreign markets. Entry by firms into foreign markets is a slow, costly and high risk process, particularly in markets as competitive as Japan. In the United States, competition was first introduced into the interconnect market in 1968 as a result of the Federal Communications Commission's (FCC) Carterphone decision. Yet in 1978, 10 years after Carterphone, telecommunications imports accounted for only 3% of total U.S. shipments of telecommunications equipment.

Impact of Title II on Other Negotiations

It was recently reported that after months of negotiations, progress has been achieved in obtaining access for MCI and Sprint to West German telecommunications networks. Recently, Canada provided more generous terms in its network operating agreement with Sprint, and U.S. trade negotiators anticipate that Canadian tariffs on U.S. telecommunications equipment exports will be phased out under the U.S.-Canada Free Trade Arrangement. It is unlikely that these developments in the West German and Canadian markets or the progress achieved under the U.S.-Japan MOSS talks would have been made had U.S. law mandated retaliation within a prescribed period unless specified U.S. negotiating goals were achieved. U.S. trading partners are unlikely to engage in meaningful negotiations under the threat of automatic retaliation.

Dangers of Sectoral Reciprocity

While Title II purports to require "fair and equitable market opportunities", it is in reality seeking sectoral reciprocity. The United States has consistently opposed the application of sectoral reciprocity because that approach could result in a futile balancing of trade flows on a sector-by-sector basis and undermine the multilateral Most-Favored-Nation (MFN) approach to trade negotiations. If widely adopted by other countries, this approach could lead to retaliation against the United States, simply because U.S. exports of farm products or computers exceeded those countries' exports to the United States of similar products.

Moreover, if the sectoral reciprocity standard is applied in telecommunications, it will undoubtedly spread to other sectors in the United States and ultimately, to other countries. If the Subcommittee determines that the telecommunications industry (one of America's strongest) requires "reciprocal" protection, how will it resist the demands of other sectors such as electronics, footwear and textiles for similar treatment?

It has been suggested that a deviation from the long standing U.S. policy against sectoral reciprocity is somehow acceptable in the telecommunications area because the United States unilaterally granted concessions in this sector through the AT&T divestiture and has not been compensated by its trading partners. Yet, the AT&T divestiture was undertaken by the United States for domestic economic purposes primarily to increase competition in the provision of telecommunications equipment and services, rather than for international trade purposes. If an exception is made for telecommunications, other sectors will surely follow down this path.

Furthermore, well established General Agreement on Tariffs and Trade ("GATT") practice provides that unilateral action by a signatory which in some fashion provides a benefit to the signatory's trading partner does not give rise to a claim for compensation or reciprocal concessions. For the U.S. to now demand reciprocal concessions through the threat of retaliation after it chose at an earlier time to deregulate its telecommunications market unilaterally has no basis under the GATT and could result in counter-retaliation against the United States.

Conflicting Roles and Procedures under Title II

Finally, the overlapping and conflicting roles assigned by Title II to the President and the U.S. Trade Representative will interfere with the market opening negotiations which the bill is intended to promote. During the two year period following enactment, the President is directed to negotiate with countries determined by the U.S. Trade Representative to deny fair and equitable competitive opportunities to U.S. firms. During the same period, the U.S. Trade Representative is required to investigate, in response to petitions, whether the same countries deny fair and equitable market access, and to retaliate against countries deemed to deny such access. No attempt is made to coordinate these simultaneous and inconsistent procedures.

A More Constructive, Multilateral Approach as an Alternative to Title II

CIAJ supports the liberalization of world telecommunications markets. However, this type of trade legislation will not achieve that goal. A more constructive approach would be for the Administration to continue bilateral market opening negotiations with our major telecommunications equipment trading partners. In order to extend the principle of open markets as broadly as possible, the Administration should also propose the negotiation of a multilateral code covering trade in telecommunications products and services under the auspices of the upcoming Uruguay Round of Multilateral Trade Negotiations ("MTN"). A model for such an approach is the conditional MFN agreements which were negotiated in the Tokyo Round, commonly known as the Tokyo Round MTN Codes. The multilateral code approach would be consistent with the U.S. Government's commitment to liberalization under GATT auspices, and would therefore strengthen, rather than weaken, the international framework of GATT agreements. Conversely, a unilateral approach to telecommunications trade would weaken that effort.

In conclusion, significant progress has been made over the past few years to bring about an open and transparent telecommunications market in Japan. This has been achieved without the passage of legislation, such as Title II, which would impose sectoral reciprocity and mandatory retaliation requirements and thereby endanger the international trading system.

As demonstrated above, Title II would impede, rather than assist U.S. companies in their performance in world markets. As an alternative, this Committee should focus its attention on more constructive, multilateral approaches to achieving liberalized trade in telecommunications products and services.

This material is submitted by Anderson, Hibey, Nauheim & Blair, 1708 New Hampshire Avenue, N.W., Washington, D.C. 20009, which is registered with the Department of Justice, Washington, D.C., under the Foreign Agents Registration Act as an agent for the Communications Industry Association of Japan. The required registration statement is available at the Department of Justice for public inspection. Registration does not indicate approval of this material by the U.S. Government.

STATEMENT OF DAVID C. WILLIAMS, SENIOR RESEARCH FELLOW, THE COUNCIL ON HEMISPHERIC AFFAIRS, TO THE SUBCOMMITTEE ON TRADE, WAYS AND MEANS COMMITTEE, U.S. HOUSE OF REPRESENTATIVES, CONCERNING WORKERS' RIGHTS AND THE RULES OF TRADE

International trade, it is often and rightly said nowadays, should be conducted on a level playing field. That field is emphatically not level when one trading partner respects internationally-recognized labor rights and the other does not, thereby gaining an unfair competitive advantage by exploiting its workers.

It is this theme which I am now addressing, and not for the first time, on behalf of the Council on Hemispheric Affairs. COHA is a tax-exempt, non-governmental organization concerned, as its name indicates, with Latin America and the Caribbean. Its purpose is better to inform the American public on social, economic, and political developments in this vast area of the world, of great and growing importance to us in the United States. On its board are distinguished figures who come from national church organizations, professional associations, and labor unions, as well as scholars, members of Congress and others concerned individually with this part of the world.

I also have a personal interest in the relation of workers' rights to the rules of trade. From 1963 to 1969, I served on the staff of the U.S. Trade Representative and had occasion to become familiar with this question, at that time most vigorously pressd by George L.P. Weaver, then Assistant Secretary of Labor. Even then, it was an issue of long standing, whose history I outlined in earlier testimony to the Ways and Means Committee.

More powerful than an army with banners, it is said, is an idea whose time has come. And I believe the time has come to make respect for internationally-recognized labor rights an integral part of the rules of trade. As members of your Committee are aware, this has already been done in the legislation establishing the Caribbean Basin Initiative (CBI), and in legislation renewing the Generalized System of Preferences (GSP) as well as the Overseas Private Investment Corporation (OPIC).

Building on these past achievements, which the International Labor Rights Working Group, of which COHA is a member, has long advocated, we should go further. In the coming Uruguay Round of trade negotiations, we should seek the addition to the General Agreement on Tariffs and Trade (GATT) of a clause dealing with workers' rights, the so-called "social clause." The United States sought this in 1979, during the Tokyo Round, but at that time only the Nordic nations joined us in supporting the idea, and it did not prevail. However, we may have better luck now, since the European Parliament in September 1986, recommended that a new GATT article be negotiated to cover fair labor standards.

In a study of the subject, the Overseas Development Council stated:

> "It is premature to gauge developing-country attitudes. Past negative reactions on the part of some developing countries to the U.S. emphasis on labor standards was based largely on what was perceived to be a punitive, protectionist approach. A new formulation of worker rights might attract developing-country support, particularly if it offered greater market access in return for progress on labor standards. Certainly the Brandt Commission -- with half its members from the developing world -- saw potential benefits from international fair labor standards."

If, however, the developing countries continue to resist the amendment of GATT in this regard -- as they have in the past -- a group of industrial countries might agree on a separate code of worker rights, analogous to the codes supplementing the overall Tokyo Round agreement, such as those relating to subsidies, dumping, procurement, and customs procedures.

The time has come, I think, for the United States to equip itself to act unilaterally in this area. This could be done by defining the failure to respect internationally-recognized labor rights as an unfair trade practice, as dumping, and the subsidization of exports already are -- a practice that ultimately could lead to U.S. retaliation, if such an extreme action was justified. This would give fair warning that, if no multilateral agreement on worker rights is reached, the United States is prepared to take unilateral action.

Internationally-recognized labor rights can be defined, as they are in the relevant section of the GSP legislation, as (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition on forced labor; (4) a minimum age for child labor; and, (5) acceptable conditions of work with regard to minimum wages, hours, and occupational health and safety. Contrary to a common misapprehension, there is no intent to impose American standards on the developing world - rather the motivation comes about from a desire to see fair and just standards, including minimum wages, relative to the stage of development a given country has achieved.

Originally, the administration sought to cast doubt on the whole concept of internationally-recognized labor standards. However, hopefully that may not now be the case, if the administration is really sincere in its efforts to seek a single, non-political standard for objectively assessing fair labor standards, and not merely to punish a nation like Nicaragua to which U.S. authorities are hostile for other reasons as well. In announcing on January 2 the cancellation of GSP benefits for Nicaragua, Paraguay, and Romania, Clayton Yeutter, the U.S. trade Representative, at least appeared to embrace this concept. He said that the action on GSP "demonstrated the importance which this administration attaches to internationally recognized worker rights."

In the long run, an open trading system can be sustained only if workers are given - and seen to be given - as much of a stake in it as consumers. By taking the action recommended above, Congress has the opportunity this year to assure workers in the United States and throughout the world that this nation is genuinely concerned about labor rights and that such convictions are meant to advance international trade rather than impede it.

DCMA **DRY COLOR MANUFACTURERS' ASSOCIATION**

Representing the Color Pigments Industry

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March 9, 1987

The Honorable Sam M. Gibbons
Chairman
Subcommittee on Trade
Committee of Ways and Means
U.S. House of Representatives
Washington, D.C. 20515-6354

Dear Mr. Chairman:

The Dry Color Manufacturers' Association (DCMA) very much appreciates this opportunity to support the comments of the Automotive Parts and Accessories Association (APAA) concerning the need for changes in the procedures of the Foreign-Trade Zones Board. DCMA is an industry trade association representing small, medium and large pigment color manufacturers throughout the United States and Canada, accounting for approximately 95 percent of the production of color pigments in this country. Foreign pigment manufacturers with sales in the United States and Canada and suppliers of intermediates to the pigments industry are also members of the Association.

DCMA fully supports APAA's emphasis on the need to prevent the use of foreign-trade zones and subzones for unfair competitive advantage in the domestic U.S. market. We urge congressional consideration of legislation that would require the Foreign-Trade Zones Board to hold a hearing on the record under the provisions of the Administrative Procedure Act and to find substantial evidence of a net benefit to U.S. employment before foreign goods used in manufacturing activities within a foreign-trade zone or subzone would be exempt from U.S. customs duties. Zone and subzone activities that are exclusively for export would be exempt from these requirements.

Foreign-trade zones and subzones are an exception to the customs duties that are mandated by the Congress. Manufacturers authorized to operate subzones may import foreign raw materials and pay duties only when the finished article leaves the subzone. Those articles exported from the U.S. are exempt from all duties. Those articles that enter the U.S. are subject only to the duties applicable to the finished article, rather than those applicable to the raw materials, which may be dutiable at a higher rate. Alternatively, foreign merchandise granted privileged status is dutiable at the rates applicable to its condition on entering the subzone.

Subzone activities have grown enormously in recent years. According to a recent General Accounting Office report, the value of the products leaving subzones increased from $47 million to $2.4 billion between 1973 and 1982. Although it was originally expected that subzones would be used primarily for export purposes, the General Accounting Office also found that 89 percent of subzone products are destined for the U.S. market and that only 11 percent are exported.

By encouraging U.S. manufacturers to produce for export, subzones can play a valuable role in expanding America's foreign trade. However, subzones can also provide unfair competitive advantages where manufacturers who use subzones to reduce the cost of their raw materials compete in the U.S. market with manufacturers without subzones who must pay higher U.S. prices or full customs duties on their raw materials.

Because of the potential danger to equal competition from foreign-trade subzones, existing law and practice require applicants to demonstrate to the Foreign-Trade Zones Board that the establishment of a subzone will result in public benefits that outweigh any damage to U.S. domestic industries. These public benefits are usually measured in terms of the net effect on national employment. The legislation that DCMA is proposing would ensure that this public interest standard is in fact applied.

DCMA urges that the Foreign-Trade Zones Act be amended to require that, on the request of any person, the Foreign-Trade Zones Board must hold a hearing on the record in accordance with Sections 556 and 557 of the Administrative Procedure Act and find substantial evidence of a net benefit to national employment before establishing any new foreign-trade zone or subzone or making any future grant of subzone status that would result in the exemption of foreign goods used in manufacturing activities within the zone or subzone from U.S. customs duties. This requirement would not apply where zone or subzone manufacturing activities were exclusively for export. Such a requirement would ensure that full consideration is given to all available evidence of the likely effects of a zone or subzone on national employment. It would allow all interested parties a full opportunity to provide information on likely employment effects and to challenge all of the information provided by applicants.

In amending the Foreign-Trade Zones Act in 1950 to allow manufacturing activities in foreign-trade zones, it was not the intent of the Congress that zones and subzones should be used to favor one U.S. manufacturer competing in the domestic marketplace over another. Nor was it the intent of the Congress that one region of the county should be favored over another. The legislation that DCMA is now proposing would not eliminate all manufacturing activities within foreign-trade zones, as some critics would wish. Instead, it would preserve subzone benefits for export activities and for those other activities that provide a net benefit to national employment, while preventing the use of subzone benefits by one U.S. company, industry or region to displace a greater number of jobs in other U.S. companies, industries or regions. The legislation would ensure that the customs duties mandated by the Congress were set aside by the Executive Branch only where there was substantial evidence that there would be no resulting loss of jobs to American industries.

The Dry Color Manufacturers' Association very much appreciates your consideration of our comments and would be pleased to respond to requests for any additional information.

Respectfully submitted,

J. Lawrence Robinson
Executive Vice President

dynamic classics, ltd.
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April 10, 1987

APR 14 1987

PLEASE REPLY TO:
SHOWROOM
230 FIFTH AVENUE
NEW YORK, NY 10001
212-571-0267
Office of the President

Joseph K. Dowley, Esq., Chief Counsel
Committee on Ways & Means
1102 Longworth House Office Bldg.
Washington, DC 20515

Dear Mr. Dowley:

Dynamic Classics is a public company importing a wide range of consumer products. Our current volume is approximately $20,000,000 per year. We employ approximately 75 people and have been in business since 1964. Our Showroom and sales office is in New York City and our warehouse and general office in Saddlebrook, New Jersey.

We, at Dynamic, are particularly concerned with the so-called scofflaw provision contained in section 175 of H.R. 3 and urge that this provision be deleted from the trade legislation which is now pending before Congress.

This provision would prohibit any person from importing for a three year period if, during any seven year period, such person was either convicted of or assessed a civil penalty for only three separate violations of one or more customs laws involving gross negligence, fraud, or criminal culpability. The offenders covered by this provision would include firms, corporations, or other legal entities as well as officers and principals of the entity, and any employee or agent of the entity who was directly involved in the violation concerned. Not only is the 'person' prohibited from future importing, but the 'person' is prohibited from engaging 'any other person for the purpose of introducing on behalf of the multiple customs law offender, foreign goods' into the United States.

Our vigorous opposition to section 175 'scofflaw' sanctions is premised on the following flaws in the proposed legislation:

> This is a criminal statute, yet the provision is vague and imprecise in a number of respects including: a) the definition of 'convicted,' and 'finally determined' which have a certain meaning in the administrative penalty proceedings of the Customs Service; and b) the circumstances under which the 'offender' is prohibited from purchasing products imported by others;
>
> The exposure to criminal liability of corporations, their officers and principals as the result of a series of non-criminal actions, determined by an administrative agency to constitute 'gross negligence';
>
> The improper equation of negligent conduct with fraudulent conduct;

The apparent treatment of each entry which contravenes customs law in the manner described as a separate 'violation,' no matter how many thousands or millions of entries the importer may make in a seven year period;

The inclusion of insignificant, technical, civil violations, and the failure to distinguish them from those resulting in substantial revenue losses or other injuries of the U.S. economy;

The failure to take account of the fact that the distinction between gross and simple negligence under Customs administrative proceedings is often very arbitrary and unpredictable, especially when large corporations with many employees are involved, and obscure or stray facts within the knowledge of one employee are incorrectly considered to be 'known' to all corporate employees.

In summary, we believe the 'scofflaw' sanctions provision is inherently inequitable and unjust, that it constitutes a denial of due process, and that it ignores the inevitability of occasional human error or misunderstanding in dealing with complex and, more often, imprecise and poorly communicated administrative customs procedures. Importer corporations such as Dynamic Classics, Ltd., whose employees process many hundreds of entries every year, would be particularly vulnerable and would be forced to contest in the courts, every mundane administrative entry penalty proceeding in order to avoid the crushing legislative sanctions resulting from any three 'final determinations' of gross negligence over any seven year period. That is unfairness personified. The possibility that actions by uninformed, distracted, or innocent employees could result in an importers being cut off from its overseas suppliers of hundreds of products, many of which are not available domestically at any price, at an incalculable cost to the company and the the consuming public, graphically illustrates the absurdity of the 'scofflaw' sanctions provision.

The existing criminal and civil laws are more than adequate to deal with true criminal activity and with any civil misfeasance. The 'scofflaw' sanctions proposal is nothing but very thinly disguised in terrorem harassment of the trading community, and should be rejected outright, as unworthy of serious consideration. Certainly there can be no question of such a provision advancing the stated objective of H.R.3, which is to enhance the competitiveness of American industry. Such legal protectionism can only have the opposite effect, by helping to convince domestic producers they do not need to maintain and improve their competitiveness because trade barriers such as this one will insulate them from foreign competition.

Again, we urge that Congress not pass this ill-conceived and counter-productive trade legislation, just so it can be perceived to be doing something to address the complex causes of our deteriorated trade and current account balances.

Sincerely,

DYNAMIC CLASSICS, LTD.

Marvin Cooper
President

MC:r

Electronic Industries Association

Peter F. McCloskey
President

February 20, 1987

The Honorable Dan Rostenkowski
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Rostenkowski:

As the oldest and largest national trade association representing more than $206 billion in U.S. sales, and 85% of the dollar volume of U.S. electronics manufacturing capacity, the Electronic Industries Association (EIA) and its members have an important stake in the outcome of the legislative trade debate. As you begin your hearings on trade and competitiveness we welcome the opportunity to express our views.

EIA shares your interest in working for a world trading system in which nations compete fairly for world markets. We also favor domestic policies that will enhance the competitiveness of American industries, including electronics, one of America's key industries.

As Congress considers various proposals for trade legislation, we recommend that any such legislation provide for the following:

(1) Reduction of export disincentives

Affirmative action should be taken to remove disincentives to U.S. exports and promote the reliability of U.S. exporters. Specifically, U.S. export control laws should be amended to:

- Reduce the level of controls on exports and re-exports of U.S. origin goods and technology in "West-West" trade to take into account, for example, criticality of items, the risk of diversion, and foreign availability from non-U.S. sources.
- End export controls for reasons of foreign policy, except in cases where such action is likely to achieve its objectives and our trading partners join with us in imposing similar controls;
- Emphasize the importance of exports to the well-being of the U.S. economy;
- Confirm the leadership role of the U.S. Department of Commerce in export administration;

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- Place greater emphasis on multilateral approaches to foreign export controls;
- Continue the present procedures for Congressional approval of exports under the Arms Export Control Act; and
- Amend the Foreign Corrupt Practices Act, especially to clarify the definitions of improper conduct.

(2) Vigorous trade promotion

- Provide competitive export finance to U.S. exporters;
- Promote greater industry-government consultation and cooperation in obtaining business in markets abroad;
- Provide for negotiations for improved U.S. access to foreign markets and implement effective U.S. remedies if foreign governments refuse to open their markets to legitimate U.S. commerce;
- Provide for continued efforts to open foreign markets for U.S. telecommunications equipment;
- Emphasize the importance of the free and equitable flow of technology, as well as goods, in world commerce;
- Continue the Administration's multilateral and bilateral trade negotiating authority to achieve trade promotion objectives; and
- Enhance the protection of intellectual property rights.

(3) Effective action against foreign unfair trade practices

- Broaden U.S. unfair trade laws, consistent with our international obligations, to recognize the broad range of foreign government actions that distort international competition;
- Authorize appropriate action, in accordance with international obligations, to counter industrial policies when such policies can be demonstrated to have an adverse effect on U.S. industry in the U.S. or third country markets.
- Amend U.S. antidumping and countervailing duty provisions of the 1979 Trade Agreements Act so as to make proof of injury or threat of injury to U.S. industry less burdensome and to assure that penalties fully reflect the degree of distortion caused, consistent with U.S. international obligations; and
- Increase the Administration's accountability on import relief decisions.

Action on trade legislation alone is not enough to assure the continued viability of U.S. industry. Congress must also take actions to reduce the federal deficit, to encourage capital formation, to stimulate greater investment in U.S. research and development and assure the availability of a quality U.S. work force.

We hope that these thoughts will be helpful to you and your colleagues as you consider the proposals before your committee. EIA would welcome the opportunity to provide our views in whatever forum or form you deem appropriate.

Sincerely,

Peter McCloskey

International Economic Policy Association
1400 EYE STREET, NORTHWEST, WASHINGTON, D.C. 20005

Founded 1957
(202) 898-2020

TESTIMONY OF RONALD L. DANIELIAN, PRESIDENT
INTERNATIONAL ECONOMIC POLICY ASSOCIATION
TO THE
HOUSE WAYS AND MEANS COMMITTEE
MARCH 4, 1987

Mr. Chairman:

The International Economic Policy Association was established in 1957 as a nonprofit organization to analyze public policy issues in the international economic arena. These have included international trade, investment, taxation, raw materials and exchange rate policy questions as well as books on the U.S. balance of payments, one on U.S. Foreign Economic Strategy for the Eighties and have presented testimony to this committee on many occasions over the last 30 years.

The Business of Making America Competitive

Woodrow Wilson once said that "We are participants, whether we would or not, in the life of the world." The growth in world trade has been beneficial for the United States, especially in the earlier years after World War II. U.S. business has provided the conduit for trade in goods and services on a global basis. Furthermore, the ability to invest abroad is a rich national asset that returns foreign exchange to our balance of payments.

From 1948 through 1985 U.S. companies returned to the United States $272.5 billion more than was sent out of our country to establish the investments. That net return has been a rich asset used to help cover a deficit in our trading relationships on a commercial goods basis.

The latest figures from the U.S. Department of Commerce show that U.S. multinational companies export more from the United States than they import, yielding a trade surplus for them of over $42 billion. Even on a more narrow basis, imports from foreign affiliates of U.S. corporations were less than U.S. exports to foreign affiliates by MNC parent companies here in the United States. 77% of total U.S. exports were MNC associated with about 30% of total exports going directly to foreign affiliates abroad. Finally, studies have shown that companies involved in investing overseas have provided more employment opportunities here at home than those that have not ventured beyond our shores.

The United States now finds itself in the position of being the largest debtor nation in the world wherein our liabilities exceed our assets. We have continually run large balance of payments and trade deficits unable to pay our way in a fast changing world. As a net debtor, for us to continue to buy from abroad, to provide military services, and other activities internationally, we must borrow money from abroad. For us to attract foreign funds, the return here (i.e. interest rates) must remain relatively higher than overseas. That puts a competitive burden on all industries at home. Therefore, it is incumbent upon the United States to get its house in order, emphasize exports, keep foreign markets open, and maintain a free flow of investment on an open and reciprocal basis.

To do this, the United States must remain competitive and must examine all of those domestic and international pressures that effect our ability to compete in the world. Listed below are some of the key problems, either with policy, taxes, trade law, or in the securities area, that effect U.S.

competitiveness. This is not intended to be an exhaustive list, but rather a highlight of some of the key areas that need attention -- areas which singly might not seem important, but taken together are crucial.

Taxes, Trade, and Economic Policy

1) The Tax Reform Act of 1986 can subject foreign income to double taxation. This is the first time the principle of avoiding double taxation of the same income has been breached. A U.S. company operating abroad pays taxes where it earns its income and those taxes are credited against any potential U.S. tax due on the income when repatriated. In those cases where foreign tax rates are very low, the difference between the foreign rate and the U.S. tax rate is effectively assessed on income returned to the United States. Where foreign taxes are very high, the U.S. corporation is allowed a foreign tax credit for taxes already paid to a foreign nation up to the U.S. tax rate. Any excess can be carried over and used in future years. Thus, at a minimum, a U.S. corporation pays taxes at the U.S. rate.

First, the 1986 Act eliminated the use of 10% of foreign tax credits where a U.S. company is in an alternative minimum tax situation. Only 90% of the foreign taxes already paid to foreign governments may be credited against U.S. taxes in this situation. Because of the redefinition of the items which go into the basket to determine the alternative minimum tax (i.e. the inclusion of the difference between reported and book income) many companies, large and small, will be in a minimum tax situation. If those companies have paid taxes to a foreign nation, effectively, 10% of those taxes will not be creditable. Effectively, there has been a 2% net increase in the tax on foreign operations where a U.S. taxpayers had only foreign source income already taxed by the foreign country at a rate higher than U.S. rates. This amounts to a double tax.

Second, the Treasury regulations on Section 861.8 and the Tax Reform Act provisions regarding allocation of domestic U.S. expenses to foreign income has the effect of reducing the credit for foreign taxes paid. A U.S. manufacturer producing a product in a foreign country for sale locally is at a disadvantage against a local competitor. His total tax burden can be higher especially if the foreign taxing authority does not recognize the arbitrary allocation of expenses to the foreign income. The same problem arises from the allocation of U.S. domestic R & D expenses to overseas income. Here there is the added problem of encouraging R & D to actually move to foreign countries. In both cases, the United States should not tip the balance against overseas income by increasing the tax burden vis-a-vis a foreign competitor.

Third, there is a serious problem with the new Section 864 (e) changes made on the allocation of interest expenses.[1] Because of the changes, subsidiaries of U.S. companies may borrow directly from local third party lenders which could have far reaching implications for the U.S. balance of payments. For instance, the foreign borrowings may be at a higher fixed rate than if the parent company went directly to the financial markets. Certainly, there will be an effect on allowable tax credits for foreign taxes already paid.

2) A unique problem exists in the changes made by the Tax Reform Act for branch operations in foreign countries. A U.S.

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[1] A discussion of this more technical aspect of the 1986 Tax Act by Eileen Breindel of Deloitte, Haskins & Sells can be found in "International Taxation," C.P.A. Journal, N.Y. State Society of Certified Public Accountants, forthcoming, 1987.

corporation which may not have business income at home and operates on a branch basis in a foreign country can find itself affected by the 90% limitation mentioned above. For instance, in Canada, a U.S. branch company would pay a 50% tax on its operations there. It would have no tax liability on its Canadian income in the United States because the U.S. tax rate is less than 50% and the Canadian taxes paid for doing business in Canada would yield a tax credit to eliminate double taxation. If the parent had no actual operations located in the United States, no tax is technically paid to the United States, the alternative minimum tax would be applied. With that, 10% of foreign tax credits would be lost since the Tax Act allows use of only 90% of foreign tax credits in this case.

Natural resources are vital to this country's national security, yet it is in this area where the alternative minimum tax comes into play. Because resources must be mined or extracted where they are found geologically, some U.S. companies operating abroad (especially as branches) will be taxed at a higher rate than their competitors because of the application of the alternative minimum tax and the loss of 10% of legitimate foreign tax credits.

3) Application of domestic excise taxes to foreign income is a burden. The Congress established a special tax for the Super Fund to be paid by every domestic corporation to help cover a previous substantial shortfall in Super Fund revenues. It is an excise tax placed at $12.00 for every $10,000 in revenues over a two million dollar base. This has led to a situation where a U.S. corporation operating in a foreign country on a branch basis must pay the U.S. domestic tax for the activity in the foreign country even though no revenues may be earned in the United States. If the parent U.S. firm was actively engaged in such excise taxable activity at home, the tax would be paid. It is an added competitive burden to force a U.S. company operating in a foreign country to pay a U.S. domestic excise tax on the foreign operation.

4) The transition rules of Section 904 regarding foreign income will in some cases deny the use of credits for foreign taxes already paid. This is especially true if there is a sale of a U.S. owned foreign company in 1988 or 1989 where the full corporate tax rate must be paid with no use of carry over tax credits.

5) Section 301 of the Trade Act of 1974 should be amended to make clear that industrial targeting by foreign nations is actionable through application of the Section. Industrial targeting can change the natural comparative advantage between nations and place one trading partner at a disadvantage.

6) The United States Trade Representative should be given greater responsibility to take final action under Section 301 so that the President of the United States does not have to become involved in each and every case. This should reduce the United States' foreign policy costs of having the President associated with action. The personal intervention of outside political leaders with the President will always occur. However, the President cannot now blunt this pressure by noting that he isn't the action official under the law.

7) An international economic impact statement should be required for all major U.S. government decisions, rules, and regulations that effect international commerce and investment. The competitive impact of any government action should be measured in the same way that environmental impact statements are required domestically. The U.S. does not have an economic surplus to give away and is a debtor nation.

8) Natural resource subsidies provided by foreign nations should be actionable under our countervailing statues. Material inputs to production provided by governments to their domestic producers must be priced at their real market value

if the products ultimately flow into the international trading system. First, it is discriminatory for a foreign country to provide internationally traded products with a subsidy element given only to their domestic producers and no others. Second, the providing of natural resource subsidies can create excess production capacity in several commodities, thus creating an oversupply of materials, depressing world prices, and inuring efficient producers, especially in the United States. Unfairly traded imports can lower prices to noneconomic levels and the benefits to consumers are fleeting at best. Once enough domestic U.S. production is effect by unfairly traded imports, supply and demand adjusts and prices tend to rise, but the U.S. firm may be out of the market or out of business.

9) There should be an immediate agreement not to use voluntary quotas for controlling imports in crisis situations. Temporary added tariff rates should be the preferred method when using voluntary restraints agreed to in bilateral negotiations leading to orderly marketing agreements. Strict adherence to quotas does not allow the market mechanism to operate and, in fact, can enrich the foreign exporter at the expense of the U.S. consumer and American business. This was the case in the automobile quotas which in one year, for instance, swelled the profits of Japanese companies by $824 million, but American companys' profits by only $115 million. When a tariff is applied, the economic rent of higher prices is collected by the U.S. government, not the foreign manufacturer. If the foreign manufacturer wishes to maintain his market share or a new entrant wishes to begin operations here, the price effects of supply and demand can operate under tariffs but not under a quota. If quotas are going to be continued, they should at least be auctioned off so that some of the economic rent accrues to the U.S. government.

10) The United States must meet all foreign export financing subsidies which compete with U.S. export products. Only then can we convince foreign nations to eliminate these measures. We should stop haggling over whether or not to fund the Export/Import Bank, but rather make as much credit available as necessary to equalize the financing for U.S. products and make this a deterrent to developing such programs. While we should never strike first in providing outright subsidies to exports, we must always act in defense so that others can be persuaded of the futility of such practices. In fact, it is protectionist not to act.

11) The United States should initiate bilateral and multilateral agreements of a timed duration to phase out trade distorting subsidies and where agreement cannot be reached, take prompt and effective action on the subsidized imports.

12) Respect for intellectual property rights should be buttressed in U.S. law and we should not offer any country violating intellectual property rights, automatic safeguards here in the United States.

Ownership of patents are the technical frontiers that may prove more important to our long range welfare than physical plants. Other countries should be encouraged to accept the principle of respect for intellectual property rights by the setting of standards in U.S. trade legislation that authorizes our government to enter into trade negotiations. As one of the conditions for granting most favored nation access to our markets, and the application of an injury test in international trade commission cases, we should adhere to the principle of protection and compensation for intellectual property rights. This includes patents, trademarks and proprietary technology or processes. In addition, where a country is found to have habitually violated U.S. intellectual property rights, action should be taken to restrict imports of the particular product benefitting from the pirated property rights.

13) Performance requirements must be avoided on American foreign investments and we must enter into negotiations immediately to eliminate them. Some nations accept foreign investment only under the strict condition that a certain percentage of the output must be exported. This and other requirements can skew international trading relationships. The degree of access to the U.S. market should reflect the existence of such requirements and should be part of a negotiating process. Where such requirements involve another government's promise to subsidize production or close local markets to competition, then the performance requirements are no different than subsidies which should be actionable under international trade law, including countervailing duty and Section 301 cases. If a foreign country and the investor know that the product produced in a plant subject to onerous performance requirements by the foreign nation cannot enter the United States, the economics of building the facility will change radically. This provision should also apply if the product of a third country investor's plant enters the United States with the benefit of performance requirements placed on the industry.

14) The United States must consider the adoption of a conditional most favored nation policy that rests on reciprocity and national treatment in both trade and investment. Insisting upon true respect for the principles of national, reciprocal, and MFN treatment, we should condition future access to our markets on adherence in practice to these principles by our trading partners. Third countries that do not agree to the stipulations between two trading partners should not necessarily benefit to the same degree from the lowering of barriers between the two primary parties. The effort here is to structure our negotiations along the lines of the Tokyo Round MTN Government Procurement Code, Subsidies Code, and other agreements. Only the countries that agree to codes get the benefit of those codes. The effort here is to leave your market open to trading with another country so long as their market remains open to you.

15) Domestic adjustment assistance to U.S. firms and workers adversely effected by import competition must be reshaped into a coordinated program to help firms redefine their operations and help workers retrain for marketable skills. These programs should be combined with unemployment payments when appropriate and should be funded with the tariff collections received as a result of voluntary restraint agreements. Within this program can be worked an Individual Training Account as explained in the recent book "The High-Flex Society" (Choate, 1986) so that American workers can become more mobile and adapt to the pace of rapid change.

16) The United States should not be afraid when conditions warrant to make use of Article XII of GATT on restrictions to safeguard the balance of payments. Under this article the United States would be allowed to restrict the "quantity or value of merchandise permitted to be imported." In the past several reserve currency countries have used Article XII, including Britain, where the pound was considered a major reserve up until the 1970's, France, and Japan.

Use of tariffs here through tariff rate quotas may be the appropriate GATT legal mechanism.

In joint consultations under GATT we should explore the use of Article XII on a bilateral basis for at the present time it must be applied across the board. The changed circumstances in the world since GATT was written would be reflected. To reflect changing times, even our Constitution, our most sacred document, has been amended in response to crises.

17) U.S. foreign economic policy must be coordinated by an institutional mechanism at the White House level. No other point within the government can direct the different departments on policy regarding international economic issues. We

need a Foreign Trade and Economic Council with a special advisor to the President on foreign economic matters.

18) The Foreign Corrupt Practices Act needs to be amended to incorporate changes reviewed by the Congress in 1985-86. Criminality and other standards need to be adjusted.

19) The confusion of standards in the anti-boycott provision of the internal revenue code (by the so-called Ribicoff amendment) and the anti-boycott provision of the Export Administration Act (EAA) should be eliminated. The former was initially passed as a stop-gap measure until the more comprehensive EAA provisions were passed. Now that the EAA handles this issue, the Ribicoff amendment should be dropped.

20) The United States must encourage investment over consumption in all its domestic laws -- especially in its tax law. The budget deficit must be significantly reduced and investment (along with investment funds) increased. To do this, some consideration should be given to a value added consumption tax. The U.S. faces impositions of other countries' value added taxes on our exports to them while their manufacturers receive a rebate of the tax on their exports. The U.S. could so impose a VAT and it would encourage investment and saving over consumption. It would also aid in providing funds to cover part of the budget deficit.

21) European Agricultural Policies that subsidize their food exports to third countries and deny us markets should not be tolerated. The variable levy and price supports that encouraged overproduction at high prices must be negotiated away. Finally, we can no longer afford to give up agricultural markets through the expansion of the Common Market. With the entry of Spain and Portugal, U.S. farmers will suffer losses in excess of $1 billion by some estimates. The U.S. must be resolute in making redress here.

The "Short Term" Syndrome and U.S. Competitiveness

Within the past decade there has been a fundamental shift in focus by both institutional investors (which now represent at least one third of all corporate stock ownership) and business management toward short term, quarter-by-quarter, bottom lines instead of the more traditional long term performance criteria.

Management seems increasingly driven by the need to convince stock analysts who essentially "make" the market valuation for many securities, especially for the large institutional investors. In turn, they are driven by the need of pension and mutual fund managers to make a competitive showing, again on a quarter-by-quarter basis.

These trends are exacerbated by the recent takeover mania, especially hostile takeovers which distract management from even medium term strategic planning goals and add major elements of uncertainty to the entire web of corporate relationships. Hostile takeovers also destroy the synergy and long term strategy of leading U.S. international companies which traditionally have been the cutting edge of American competitiveness.

The role of arbitrageurs in such takeovers has been growing, especially with the increased use of "junk" bonds. These arbitrageurs' interest is limited to making a fast profit by short term speculation and the windfall profit of a hostile takeover effort, which is often stimulated by signs of upward movement in a stock's price. Takeovers are also spurred where a stock's price does not reflect the estimated value of the underlying assets. Even unsuccessful takeovers force target companies to adopt defenses, such as large debt acquisitions which may be unhealthy for the firm's long term future.

All of these trends pose major dangers for the long term health of American industry, now faced with world class competition around the globe. It seems timely, therefore, to examine the corporate-Wall Street-institutional investor culture to see what can be done to restore more of a long term criteria against which to measure performance.

Such a look should not exclude such radical changes in present exchange and SEC requirements as eliminating quarterly reporting altogether, and substituting semi-annual or even annual reports. This would, of course, encounter objections from many users of company data and may not be practical. Nevertheless, even a proposal to this effect might stimulate some rethinking of the many factors which contribute to the "short term syndrome."

1) At the corporate level, various stock option and other incentive plans might be geared to a longer term framework so that rewards relate more to sustained performance over a period of years than to corporate ups and downs in a particular phase of the business cycle.

2) A look should also be taken at the accounting rules to see what changes could be introduced favoring the long term perspective over the short. This would require discussion with the professionals at the Financial Accounting Standards Board, who are surely aware of and concerned about the problem.

3) Ways should be sought of publicly recognizing corporations and senior executives for outstanding long term performance, including contributions to the balance of trade and the balance of payments, job creation, production innovation, marketing, etc. in a three to five year period. Some professional societies seek to do this within their own specialized areas. We need a more national recognition, of the type symbolized during World War II by the Army-Navy "E for Excellence," for example, by a President's Honor Roll of corporate performance.

4) Action is needed to limit hostile takeover activity by closing loopholes in the Scott-Rodino Act (a) requiring greater transparency to reveal use of nominees, shell companies, and silent partners; shortening the time of notification to the initial SEC to forty-eight hours instead of 10 days, including stock acquired directly, i.e. not through the exchanges, in reporting requirements; (b) providing a cooling off period before voting rights could be utilized in hostile takeovers, and (c) restricting "junk" bonds by requiring issuers to have a substantial margin of financial assets behind the bonds.

There is a strong national interest in lengthening the performance focus, since otherwise corporations will hardly take painstaking step-by-step efforts to build overseas markets and to plan their foreign investment with long term strategy in mind, as the Japanese have done so successfully.

No Substitute for Sensible Policies

Since September 1985 the United States has proceeded down a road of coaxing a devaluation of the dollar. One hope is that protectionist sentiments can be thwarted by using the argument that a reduced value of the dollar will bring a miraculous turn around in U.S. trading relationships.

We have testified quite often over the last twenty years that a devaluation of the dollar or revaluation of other currencies will not be the cure-all for the deficit in our commercial transactions and that this is a holdover from classical international trade theory. It is not applicable to a world where the classical model of competition, free trade, and mobility of capital and labor simply does not apply. In the ideal it works, but to be practical there are problems. While the United States cannot begin to solve its trade problem without bringing down the high value of the dollar, it is wrong to rely on the dollar alone as the mechanism for balancing U.S. trading relationships.

The United States would have to suffer a continued and persistent decline in the exchange rate parity with other nations which would put at risk the foreign capital now financing our deficit, the stability of our consumer prices, and the foreign costs now born by the United States government in such things as military expenditures abroad. In fact, our foreign military costs have gone up by more than $5 billion so far. Furthermore, the standard of living of all Americans will decline as a result of continued devaluation while a larger share of our GNP goes to pay interest on our foreign debt.

Historically 65% of U.S. trade is with countries whose currencies either fluctuate minimally against the dollar or float lower than the dollar. Another 14% of our trade is involved in agricultural products which for the most part in primary markets are governed by factors other than exchange rates. In the last three years 75% of the United States' trade has been with such countries.

Devaluation of the dollar is not a cheap alternative. Any casual observer can see that a devaluation would have to be rather severe (with loss of income consequences for the U.S. electorate) to be truly effective in substantially dropping the U.S. trade deficit. In addition, one would have to presuppose that foreign countries, and a handful at that (Japan, Germany, England, France and Canada), would be responsible for giving the United States a net $150 to $170 billion advantage in selling goods to bring our deficit within manageable ranges.

The effort on the part of the United States to get foreign nations to boost their domestic economic growth rates is, in part, a realization that if they grow more, they'll import more. We need to press our partners to continue down the growth road. Nevertheless, this is only part of the answer and cannot substitute for a strong international economic policy. Germany, for instance, would have to grow by about 5% in real terms to have the kind of impact for which American officials opine. And for Japan, I doubt whether increased domestic economic growth will make that much difference in our U.S. trading relationships. The last time the dollar depreciated by over 30% with the Japanese yen, and the last time Japan grew by 3 to 4 percentage points more than the United States (in one year we were in a recession), our trend line trade deficit with Japan continued upward! There is reason to believe that this behavior will be repeated again.

Who's On First?

We are left now with several years of discussion between political leaders, government officials, and academics on the proper exchange rate relationship of the dollar. The argument has been obfuscated to the level of experts trying to determine such things as the equilibrium rate to balance out the United States current account or the correct purchasing power parity relationships between currencies. Several more years of inaction may be the result. Unfortunately, we believe that the greatest supporter of protectionism is an indeterminate trade policy that allows the U.S. financial situation to deteriorate further, creating irresistible political pressures.

It is very difficult for anybody to be able to assess the proper rate of the dollar. Even knowledgeable people on the subject differ from month to month and among themselves. For instance, listed in table 1 are public pronouncements on the proper value of the yen.

As you can see, to believe that in May of 1986 the proper yen/dollar rate should be 120 to 135 but in February 1987 it should be at 154 is quite a disparity. Furthermore, this implies an appreciation of the dollar (a depreciation of the yen) by 22% over what was quoted in May of 1986! It is hard to believe that with all the clamour for a reduction in the value of the dollar (especially by the public statements of the U.S. Treasury), experts would now believe that a yen, weaker than was needed in 1986 was the correct rate today.

The fact remains that there is absolutely no substitute for a trade policy that opens international markets and keeps world trade on an upward growth trend. We must keep our markets open, improve our own competitiveness, force other markets open, and not lose sight of the overall objective... the necessity of America to pay its way in the world by selling the goods and services it produces best.

TABLE 1

PUBLIC ESTIMATES OF THE PROPER YEN-DOLLAR RELATIONSHIP

Public Statement		Date of Statement	Rate on Date of Statement
	Implied Rate		
Need for a further trade weighted reduction of 20-30% in the dollar	127*	Oct. 4, 1985	213
Proper yen rate 120-135	120-135	May 12, 1986	161
Dollar needs to depreciate by 10-15% more	143-151	June 5, 1986	168
Yen should be at 160	160	October, 1986	161
Yen needs to settle around 150	150	Jan. 5, 1987	159
Yen is where it should be (154)	154	Feb. 16, 1987	154

*This implies a greater actual reduction to equal a overall 20%-30% trade weighted reduction.

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JAMES R. HERMAN
President

RUDY RUBIO
Vice President

CURTIS McCLAIN
Secretary-Treasurer

March 6, 1987

Honorable Dan Rostenkowski
Chairman, House Ways and Means Committee
1102 Longworth Office Building
Washington, DC 20515

Dear Mr. Chairman,

I am writing to express the ILWU's views on a particular aspect of the trade crisis now under consideration by your subcommittee: the violation of internationally recognized worker rights in countries which trade with the United States. Our comments, which we request be made a part of your hearing record, will be confined to this issue.

H.R. 3, the Trade and International Economic Policy Reform Act of 1987, includes provisions which recognize the link between the extensive violation of labor rights abroad and the flood of imports into the United States which has victimized millions of American workers. These provisions, which are identical to those approved by the House in its trade measure of last year, are an extremely significant development in the Congressional debate over the U.S. trade deficit.

Trade policy has been viewed for too long by too many as a simple contest between the philosophies of "free trade" and "protectionism." More attention has been paid to the fact of cheap imports than to their true causes. There is a misconception that the United States' comparative openness to imports is itself the reason for their steady increase. But the absence of barriers alone can hardly explain why these imports have so steadily displaced American products in the market place.

The ultimate reason for the increase of cheap imports is that they cost significantly less than American products to produce -- and in a number of countries in the Third World this is the direct result of inexcusably bad working conditions and the suppression of workers' efforts to organize.

H.R. 3's Section 112(5) strikes at the heart of this unfair competitive advantage by authorizing restrictions on imports from countries where the basic labor rights defined in the 1974 Trade Act are violated. These rights are the freedom of association; the right to organize and bargain collectively; prohibition of forced labor; a minimum working age; and acceptable standards of work hours, wages, and occupational safety. Section 112(5) would define violations of these rights as unfair trade practices and make them actionable under Section 301 of the 1974 Trade Act. Section 152(b)(3) would require the President to attempt to negotiate similar provisions in the General Agreement on Tariffs and Trade (GATT). Section 554(d) would require the Secretary of Labor to monitor international adherence to these rights.

In recent years, Congress has made such adherence a condition of eligibility for duty-free import access under the Generalized System of Preferences (GSP). Congress has also attached similar eligibility requirements to the insurance protection offered to U.S. firms by the Overseas

Private Investment Corporation (OPIC). Both of these actions were important steps in the right direction.

However, the Reagan Administration has chosen to apply these eligibility standards in an unconscionably selective manner. The U.S. Trade Representative recently announced the termination of GSP eligibility for two countries not allied with the United States: Romania and Nicaragua. Paraguay's eligibility was suspended. But for Chile, whose record on labor rights is far worse than any of these three countries, review will be "continued" for an additional year. No action whatsoever was taken with regard to South Korea, Taiwan, Haiti, Brazil, or any other country.

Yet abundant evidence has been submitted by unions and respected human rights organizations to Congress and to the U.S. Trade Representative that massive violations of labor rights take place in Chile, Taiwan, South Korea, the Philippines, Brazil, Haiti, and other Third-World countries. Systematic repression of union organizing efforts, extensive child labor, and brutal working conditions in these countries have been documented at length. Average wage rates for manufacturing workers range from 10 to 15 percent of their U.S. counterparts. The differentials are even greater in agriculture: Philippine sugarcane workers compete with ILWU workers in Hawaii at wages of less than $2.00 a day, even when their employers choose to honor the Philippine minimum-wage law.

Even the U.S. State Department's 1986 and 1987 reports on human rights, despite significant omissions and inaccuracies have confirmed wide-ranging abuses of labor rights in countries whose imports to the United States have skyrocketed in recent years. As ILWU and many other unions have long maintained, these countries clearly do not meet the eligibility criteria for GSP and OPIC; and clearly they deserve the sanctions H.R. 3's labor-rights provisions would authorize. The Administration's failure to enforce current law in this vital area makes it all the more urgent that these provisions be enacted.

It bears emphasis that the labor-rights violations in question are not committed merely at the whims of particular employers. In each of the countries being challenged, the government has institutionalized a well thought out policy of labor repression. Laws and decrees explicitly limit, and in many cases prohibit, the right to organize or strike. Laws covering minimum wage, hours of work, and occupational safety -- where they exist -- have little or no enforcement back-up and are violated on a routine basis. Government-sanctioned violence against union activists -- including murder, kidnapping, imprisonment, torture, and sexual abuse -- is commonplace. Employers in these countries, in short, are not merely committing abuses on their own volition; they are operating as they are expected to operate in a cultivated environment, with the active assistance of government police or military personnel.

Opponents of labor-rights legislation have criticized it as an attempt to impose the impossible requirement that impoverished Third-World nations immediately provide pay and working conditions at levels equal to those in the United States to retain access to our market. This is misleading and false. It is unfortunately clear that such levels are not feasible in most of these countries at this time. Significant improvement is clearly possible, however -- particularly if the workers in these countries are allowed to organize. This is all that H.R. 3's labor-rights provisions would require.

Four of the five requirements set out in the 1974 Trade Act and in H.R. 3 deal only with rights of principle. The fifth requires only the presence of certain standards and does not peg them at any absolute level. From the strategic perspective of a union, the freedom to organize is far more critical than any particular pay or working standard imposed by law.

For the ILWU, the current trade imbalance only confirms what we have long known: that American workers' own well-being is inseparably bound up with the progress of our fellow-workers abroad. But self-interest is not our only motivation. Just as we reject the callous assumption by some that economic recovery in the United States will require the steady erosion of domestic labor costs to restore our "competitive edge" in the world economy, we reject the common assumption that labor rights must be trampled on as they are in many countries for the sake of what is euphemistically called "initial capital formation."

We are opposed to employers in these countries -- whether native or U.S. multi-national -- enjoying the benefits of export to the U.S. market when those benefits are withheld from their workers. We find it all the more offensive that many of the governments which have been most guilty in this respect have also enjoyed considerable economic and military aid from the U.S. Government.

For all of these reasons, we urge your Committee to retain, without modification, the labor-rights provisions of H.R. 3 in whatever trade legislation you may adopt, or to approve these provisions in separate form.

Thank you for providing us this opportunity to submit our views.

Sincerely,

Mike Lewis

Mike Lewis
Washington Representative

ML:nd

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March 6, 1987

COMMENTS OF THE ITC TRIAL LAWYERS ASSOCIATION* ON PROPOSED AMENDMENTS TO SECTION 337 OF THE TARIFF ACT OF 1930 INVOLVING UNFAIRLY TRADED IMPORTS

SUMMARY OF ASSOCIATION POSITION

A number of bills** have been introduced in the 100th Congress which would radically amend the provisions of Section 337 of the Tariff Act of 1930 ("Section 337"). The Association has studied and analyzed the amendments proposed in these bills and opposes enactment of certain of the key amendments as now drafted.

While the Association agrees with the apparent objective of these bills to make Section 337 more effective and efficient, and indeed agrees with many of the specific provisions, the Association believes that the bills as a whole do not accomplish their objective. To the contrary, some of the amendments, if adopted, would severely interfere with the effectiveness of Section 337 and make it less useful in protecting U.S. intellectual property interests. The Association believes strongly that before any amendments are made to Section 337 affecting its use for years to come, the appropriate legislative committees of the Congress should thoroughly consider whether the purported gain from certain proposed amendments is worth risking the future effectiveness of the statute as well as other adverse effects on U.S. intellectual property rights.

The Association specifically opposes the elimination of the requirement in Section 337 that some economic harm be demonstrated to a U.S. industry in patent, trademark, copyright, and mask work cases. The Association proposes instead that a rebuttable presumption of injury be incorporated into the law, which presumption would address concerns raised about the injury requirement and yet help to avoid many of the problems associated with an elimination of the injury requirement.

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* The ITC Trial Lawyers Association ("Association") is a professional organization of more than 300 lawyers who practice before the U.S. International Trade Commission. The Association has as its purpose the advancement and improvement of the operation of the international trade laws, and, in particular, Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), a law which permits the exclusion from entry into the United States of articles which are unfairly traded and which injure a U.S. industry. The Association is a national professional association whose members are attorneys, including a large number of patent attorneys, representing U.S. manufacturers and industries, as well as foreign manufacturers and importers of foreign articles, and which includes outside counsel to corporations as well as in-house counsel.

** Among such bills are H.R. 3 (section 142), and H.R. 1154 (section 5009) which was proposed by the Administration.

The injury requirement has rarely been determinative of whether relief will be provided under Section 337, and in the few cases where it has been, relief from unfair practices was available in the federal courts. Eliminating the injury requirement:

1. would subject Section 337 to needless opposition because of its inconsistency with our international trade obligations (particularly the General Agreement on Tariffs and Trade ("GATT")), resulting in increased challenges to Section 337 actions, retaliation against U.S. exports, and increased disapproval of relief by the President following affirmative ITC decisions, thus making relief under Section 337 unpredictable and less useful;

2. would interject Section 337 into the upcoming multilateral trade negotiations and interfere with or prevent accomplishment of U.S. intellectual property goals for such negotiations, such as conclusion of an anticounterfeiting code;

3. would increase duplicative litigation by encouraging unsuccessful parties before the ITC to retry the issues in the federal courts or, having failed in the courts, retry the issues at the ITC.

4. and, as noted by former Chairwoman Stern of the ITC in her past testimony before the House Judiciary Committee, would (along with the elimination of the domestic industry requirement) expand the jurisdiction of the ITC far beyond international trade matters and turn the ITC into an international patent court.

The Association believes the adverse effects of eliminating the injury requirements in Section 337 outweigh the supposed benefits.

The Association also opposes the elimination of the need to demonstrate the existence of a domestic industry under Section 337 in patent, trademark, copyright, and mask work cases. Section 337 was enacted to protect an established, or about to be established, U.S. industry from unfair trade practices. Why should Section 337 be available to protect an intellectual property owner's foreign industry? Removal of the domestic industry requirement in patent, trademark and copyright cases would also have the anomalous result of permitting foreign companies with no economic stake in plants or equipment in the United States to petition the ITC to prevent U.S. companies from importing a component of a product for assembly in the United States. Indeed, the proposed amendments would also permit a foreign company with no economic presence in the United States to use the ITC to prevent another foreign company which also has no economic presence in the United States from importing an article.

OVERVIEW OF THE CURRENT LAW

Section 337 of the Tariff Act of 1930 has not changed in substance since its enactment. It declares unlawful unfair methods of competition and unfair acts in the importation of articles into the United States, or in the sale of an imported article in the United States, the effect or tendency of which is substantially to injure an efficiently and economically operated U.S. industry, or to restrain or monopolize trade or commerce in the United States. A violation of this law usually leads to exclusion from entry into the United States of the articles connected with the unfair trade practice. Such an exclusion order normally covers not only articles of persons over whom personal jurisdiction existed and who participated in the proceedings to determine violations, but also articles of importers and foreign manufacturers who never participated in the United States. Such an order can apply to the articles of persons who did not start to produce the articles until well after the order was issued. As such, it is an extraordinary remedy which allows extremely broad relief to a holder of intellectual property rights or some other individual harmed by an unfair trade practice.

Section 337 has operated satisfactorily in the past decade to accomplish the intent of Congress. There have been over 240 cases instituted under Section 337 since its amendment in 1974. The vast majority of these cases have been based on allegations of infringement by imports of U.S. intellectual propety rights, i.e., patents, trademarks or copyrights. Seventy percent of the completed cases were resolved in favor of the domestic complaining party by virtue of the entry of an exclusion order, a consent order or a settlement agreement. The foregoing is the case despite the fact that the law now requires injury to a U.S. industry by the offending importations. In fact, this requirements has existed in Section 337 since the adoption of its precursor statute in 1922. In only two (2) contested cases out of over 225 completed cases under Section 337 since the 1974 amendments has the complaining party been unsuccessful in obtaining relief by reason of the injury requirement. (No injury has been found in other cases, but always accompanied by other findings which would have prevented relief no matter what the injury finding. This is not an indication of a major impediment to relief.

THE PROPOSED AMENDMENTS

I. THE INDUSTRY REQUIREMENT

Some bills seek to amend Section 337 by eliminating the requirement in cases concerning infringement of a patent, trademark, copyright, or mask work, that there be an industry in the United States or that the establishment of one is being prevented. Under the amendments the existence of the domestic industry would be established simply by ownership of a valid U.S. patent, copyright, trademark, or mask work. The Association opposes this provision.

These amendments, along with the amendment eliminating the injury test, provide that all one would have to show to establish a violation of Section 337 is that the unauthorized imported article infringes an intellectual property right. This must be viewed against the fact that exclusive jurisdiction for the determination of patent and copyright cases resides in the U.S. District Courts pursuant to 28 U.S.C. §1338(a). Legislation which amended Section 337 in 1974 clarified the ITC's practices involving infringement of a U.S. patent. The legislative history makes it clear that patent validity determinations of the ITC are properly not accorded res judicata effect because the ITC has no jurisdiction to determine patent validity, except to the limited extent necessary to decide a case otherwise properly before it. See S.Rep. No. 93-1298, supra, 1974 U.S. Code Cong. & Ad. News at 7239.

Under current law, in order for a case to be properly before the ITC, it is necessary to establish that there is an efficiently and economically operated domestic industry facing unfair acts of importation which have the effect or tendency to substantially injure that industry, or prevent its establishment. The proposed amendments, by removing this requirement, will effectively destroy the exclusive jurisdiction of the U.S. District Courts to determine matters affecting patent and copyright infringement and validity and turn the ITC into an international patent court where the only requirement for jurisdiction will be ownership of a U.S. patent or copyright and an act of importation which is an infringement thereof.

Section 337 is an international trade law, and it is appropriate that the extraordinary relief available under Section 337 should benefit a U.S. industry. In short, why should extraordinary relief be available to a holder of intellectual property or his licensees unless he or his licensees have formed a U.S. industry or intend to do so and have taken steps to that end. If there is no U.S. industry, then relief inder Section 337 would benefit an intellectual property owner's foreign interest; any relief of a satisfactory nature for the property holder himself could be achieved by an action in the federal district court -- loss of royalties, effects on R&D, and other injuries can be fully compensated in such an action. There is generally no need for or justification for use of Section 337 unless the interests of a U.S. industry, which include employment and creation of wealth and which are broader than the interests of an intellectual property owner, are at risk.

Further, the proposed amendments will open the floodgates of litigation before the ITC, inter alia, foreign companies. Elimination of the requirement of an industry in the United States would mean that in investigation by the ITC could be initiated upon receipt of an allegation that a valid United States patent, trademark, copyright, or mask work has been infringed. The ITC would become available not only to substantially injured or threatened U.S. industries but to any owner of U.S. intellectual property without regard to whether it has an established industry in the United States or is about to establish an industry in the United States. Accordingly, a foreign company whose only nexus to the United States is ownership of a valid U.S. intellectual property right could sue a U.S. company which was importing a component of a product for assembly in the United States or the complete product itself. For example, a Japanese company which owns a United States patent could complain of unfair trade practices before the ITC if a U.S. company manufactures products in Hong Kong and then imports them into the United States, even though that Japanese company has no established industry in the United States. Consider the even more anomalous situation in which a Japanese company with no economic presence in the United States seeks to have the products of a German company, which also has no economic presence in the United States, excluded.

Since foreign companies have expressed an interest in using Section 337 in the past, an influx of complaints on behalf of foreign interests can be expected. With these changes in Section 337, foreign concerns would not only have an incentive to burden the U.S. administrtive process to their economic advantage, but they would be given the tools to do so. Consider that, of the eleven companies having the most U.S. patents granted in 1984, seven were foreign. In addition, forty-two percent of all U.S. patents issued in 1984 were issued to foreign companies. (*USA Today*, Money, p. 1, Sept. 14, 1985; *N.Y. Times*, Sept. 24. 1985).

If the proposed amendments were to become law, investigations would no longer involve the economic expertise of the ITC which is central to its present jurisdiction over trade cases. There would no longer be a need to determine whether an industry exists, and no longer be a need to determine whether the acts of importation have an effect or tendency to cause harm to a domestic industry. The only issues to be decided by the ITC would be validity and infringement of the intellectual property right owned by the complainant. The ITC has no special expertise to handle such judicial issues. In fact, only one of the present Commissioners is a lawyer, and in recent history, the Commission has been comprised of a majority of non-lawyers. The increased case load will require major increases in the staff of the ITC and will not be reduced by reason of the propsed amendment to Section 337.

Persons who now choose to proceed against foreign importers in the ITC do so because of the extraordinary remedy which can be obtained. The ITC can issue an order that bars not only the goods of a respondent, but also of those who never participated in the proceedings and even those who first produce the goods long after the decision was rendered. This *in rem* jurisdiction is much broader than that which can be obtained in a Federal District Court.

One important effect of the proposed amendments will be to deny respondents access to Article III courts which currently have exclusive jurisdiction over issues involving patents and copyrights pursuant to 28 U.S.C. §1338(a). Respondents before the Commission are denied the right to a jury trial and may not counterclaim for infringement of any of their patents which are being infringed by the complainant. Thus, the respondent whose patent is being infringed by a complainant can seek relief only in a Federal District Court, while the complainant obtains a exclusion order on an abbreviated time schedule, removing the respondent as a competitor in the U.S. market.

In conclusion, there is serious doubt concerning the value of having the ITC -- an administrative agency not equipped with any specific expertise in the area of intellectual property rights -- invest valuable time and resources into investigations whose sole purpose will be determination of intellectual property issues. By proposing to eliminate the requirement of injury to an operating industry in the United States, the amendments seek to fundamentally alter the purpose for which Section 337 was enacted, namely, as an international trade statute to protect an established or about to be established U.S. industry from harm.

II. THE INJURY REQUIREMENT

A. General

The proposed amendments would eliminate the injury requirement from Section 337 in patent, trademark, copyright, and mask work cases. The Association opposes such amendments. It is the Association's position that a test of economic harm should remain in Section 337, and the Association supports a rebuttable presumption of injury.

This proposed change in the statute would raise anew questions of whether Section 337 is consistent with United States obligations under international agreements, and in particular the GATT. The status of Section 337 under the GATT is not secure as it now stands. Little comfort can be derived from any past consideration of Section 337 by the GATT contracting parties. The recently instituted Aramid Fiber investigation by the European Communities shows that our trading partners are concerned about Section 337. Further, these renewed questions would occur in a context where the United States no longer enjoys "Grandfather" immunity.

Any renewed focus on Section 337 actions taken against other countries' exports to the United States will likely result in demands for retaliation against U.S. exports. this is indeed the crux of the Aramid Fiber investigation now before the European Communities. Borrowing on U.S. practice under Section 301 of the Trade Act of 1974, if countries find Section 337 inconsistent with U.S. GATT obligations, retaliation against the United States is certainly a real alternative.

Renewed consideration of Section 337 resulting from the proposed amendment will also interject Section 337 into the upcoming trade negotiations, which are likely to include serious consideration of important intellectual property issues. The European Communities has already indicated that elimination of the injury requirement in Section 337 will make it difficult to achieve broad agreements on intellectual property matters. Further, countries not interested in achieving positive results will use the amendments to Section 337 to delay and obfuscate. Particularly vulnerable to this sort of tactic will be the anticounterfeiting code. Developing countries can be expected to use an amendment to Section 337 as a foil against consideration of the code and use it to influence even developed countries to postpone consideration. The chances for an anticounterfeiting code would accordingly be substantially diminished.

Further, the question of injury will be and should be considered in Section 337 cases even if the ITC does not consider injury in its violation investigation. There is no doubt that the extent of injury being experienced by those persons, firms or industries included in the amendment will become an important factor in the Commission's determination of whether it is in the U.S. public interest to grant relief. This mandated consideration is not subject to adjudicatory untested arguments on injury to be made; arguments which now are made subject to cross-examination and discovery, with an opportunity for judicial review, will be made behind closed doors. Further, there is no doubt that foreign governments and companies will argue that the President should disapprove an action of the Commission because the intellectual property owner has not been injured and has relief available in the district courts and that, if the United States takes action, it will be faced with an international challenge under GATT and be subject to retaliation. Such challenges may interfere with general trade relations without benefitting any industry in the United States. These are powerful arguments which can be made behind closed doors, with no review of the President's decision possible under existing law. The result will be increased uncertainty as to whether relief will be provided under Section 337 and greatly diminish its effectiveness.

B. International Agreements

As set forth above, Section 337 substantive jurisdiction has remained unchanged for over fifty-five years. In 1973 the Congress considered the elimination of the injury requirement from Section 337. However, the Trade Act of 1974 retained the historical injury requirement. The requirement was retained for two important reasons:

(1) To leave the substance of Section 337 unchanged and therefore not disturb the "Grandfather" status of the section under GATT; and

(2) To make sure that Section 337 remained a trade statute as intended and not be injected into the then pending Mutilateral Trade Negotiations by disturbing the uneasy acceptance accorded Section 337 internationally.

In the half century since its enactment, the only changes in Section 337 were procedural. Indeed, the Senate Report on the 1974 Act, in addressing the amendments in Section 337, stated:

> "No change has been made in the substance of the jurisdiction conferred under Section 337(a) with respect to unfair methods of competition or unfair acts in the import trade." (S.Rept. No. 93-1298, 93rd Cong., 2nd Sess., p.194 (Nov. 26, 1974)).

By preserving its substance, the section continued to be consistent with GATT by virtue of the "Grandfather Clause" of the Protocol of Provisional Application (¶ 1(b)). The Protocol insulates legislation in existence on October 30, 1947, which is inconsistent with GATT obligations, from the requirement that it conform to such obligations and in effect permits amendments to such legislation only if such amendments do not change the substance of the existing statute. It was in recognition of the necessity of insuring that the proposed amendments were substantively the same as the provisions existing on October 30, 1947, that the injury requirement was retained. Such a precaution was responsive to the Interim Commission for the International Trade Organization's statement that the Contracting Parties to GATT are "... expected not to enact any new legislation that is inconsistent with it." (GATT Reports 8 (Jan. 1948-Aug. 1949)).

C. The Spring Assemblies Case

Some proponents of the elimination of the injury criterion argue that Section 337 is safe from attacks as inconsistent with U.S. GATT obligations based upon the GATT panel decision referred to as the Spring Assemblies case. They assert that Spring Assemblies held that Article XX(d) of the GATT exempted Section 337 actions from the requirement that it be consistent with the provisions of GATT. Such assertions are ill-founded.

The panel decision in Spring Assemblies was referred to the GATT Council for consideration. Absent adoption of a panel report by the Council, the report does not constitute

GATT precedent. In the initial consideration of this decision, Canada, the European Communities and the Nordic countries all expressed disapproval of the panel report and urged its rejection, and were joined in part by Japan. The only countries supporting approval of the report were the United States and Austrailia. No final action was taken at the first consideration.

The panel report was again considered by the Council at its May 1983 meeting. A decision was made to adopt the panel report, but only after it was agreed that the report would, in effect, not be a precedent. As described by the official publication on GATT affairs,

> When the Council adopted the report, it did so on the understanding that it did not foreclose future examination of the use of Section 337 to deal with patent infringement cases from the point of view of consistency with Articles III and XX of the General Agreement. GATT Activities in 1984, at 44-45 (1984).

Based upon the foregoing, if a vote were held in the Council today, it appears likely that Section 337, as it now stands, may be considered inconsistent with the GATT, given the positions of the Council members on their first consideration and their acquiescence in the report only when it was rendered meaningless as a precedent.

D. National Treatment

If Section 337 is not exempted under Article XX(d) (GATT) as necessary to the protection of U.S. intellectual property rights, then consideration of national treatment obligations would occur. THe GATT's National Treatment clause prohibits application of laws and regulations to imported products which are less favorable than those applied to domestic products. Because of the greater difficulties that would be encountered by foreign parties in Section 337 proceedings than in Federal District Court proceedings, and because of the dual proceedings which imports face while domestic products are subject to only one proceeding, a violation of the National Treatment clause could arise.

Many of those who rely inappropriately on the GATT panel report in Spring Assemblies also assert that even if the Article XX(d) exemption were not available, there is nothing inconsistent under Article III of the GATT for "national treatment." The Association believes there is at least serious doubt as to the correctness of this assertion, and certainly many of our major trading partners do not agree with this proposition.

Some persons have argued that the Section 337 amendments on industry and injury are appropriate because it is merely removing criteria under Section 337 which are not required under the domestic intellectual property laws. While it is true that under domestic law proof of an industry is not required and irreparable injury is presumed subject to being rebutted; however, domestic law proceedings are of a fundamentally different nature than Section 337 procedings. Domestic law procedings are on a party-by-party basis, involving private rights, and are not part of the international trade laws of the United States. Persons who now choose to proceed against foreign producers and U.S. importers under Section 337 in the ITC do so because of the extraordinary remedy which can be attained under this law, which is not available under domestic laws. The ITC can issue an order that bars not only goods of the defendant before it, but also of those who never participated in the proceeding and even those who first produced the goods long after the decision was rendered. This extraordianry jurisdiction, the jurisdiction of an international trade law, is much broader than that which can be obtained in a Federal District Court under domestic law, where a case must be proved against each party. Indeed, it is difficult to imagine that the Congress would even permit the remedy under Section 337 to be applied to U.S. produced goods, as it would give rise to outcries of lack of due process and unfairness. The injury and industry criteria are appropriate under Section 337 because they justify the broad in rem relief available under Section 337 and not under domestic law, and justify the different forum and procedures. They make Section 337 a trade statute, and justify the trade statute remedy.

E. Rebuttable Presumption of Injury

There exists a middle ground with respect to retaining the present injury requirement, which places the burden of proof of injury on the intellectual property owner, and total elimination of the injury requirement. The Association would support inclusion in the law of a rebuttable presumption of injury. Under such a standard, the requisite injury would be presumed unless a respondent named as committing an unfair act, was able to demonstrate by substantial evidence, a lack of injury or threat of injury caused by the unfair acts, or to demonstrate that such acts were not preventing the establishment of a U.S. industry. The presumption of injury is a procedural change, but it has substantial effects. Essentially, unless a respondent could virtually prove the negative, injury would be found to exist. This would maintain an injury requirement and substantially avoid challenges and problems internationally, avoid retaliation against the United States, and continue to make section 337 relief effective and predictable. However, such a presumption would limit defenses based upon injury, and the costs and burdens of U.S. intellectual property holders under current law, to the extent it exists, would be reduced substantially and in many cases eliminated.

III. OTHER CHANGES

The Association also opposes any change in the parity that now exists under Section 337 with respect to the treatment of process and product patents. While the bills are not intended to change the protection afforded process patents under Section 337a, the language is unclear and may well be interpreted as changing this important right.

The Association supports the apparent intent in amending the temporary relief provisions of Section 337, but notes that the time limit provided in the bills and proposal for decisions on temporary relief may be too brief to accomplish the objective of providing more effective and timely relief for complainants.

The Association supports the default provisions of the bills, which permit the ITC to presume facts alleged in the complaint without further evidence, for the purpose of issuing relief limited to a defaulting party after consideration of the public interest.

The Association endorses the provisions of the bills which place the burden of proof upon a petitioner seeking an advisory opinion from the ITC or a modification or rescission of an existing order issued under Section 337, but opposes the provision which attempts to legislate the standard of evidence which may be considered by the ITC in conncection with such an advisory opinion, modification or rescission action:

1. A petition for an advisory opinion as to whether certain activities on the part of the petitioner will not be violative of an existing order or a petition requesting modification or rescission of an order will, in almost every instance, be a totally new proceeding in which the issues are different from those before the ITC in the prior Section 337 proceeding. However, it is entirely possible that evidence presented to the ITC in the prior Section 337 proceeding may be relevant for wholly different purposes in the later petition proceeding.

2. A question that arises as to what is the meaning of the words "evidence that could not have been presented at the prior proceeding," as used in some bills. Does it mean that it did not exist. Does it mean that it could not have been presented because it was irrelevant to the issues before the ITC in that proceeding? If it could have been presented in the prior proceeding but is now being used on different issues from those in the prior proceeding, is its use now barred? Any proposed legislation which raises so many questions as to its meaning is best eliminated if it has little to commend it.

3. The question of what evidence can be used to enable the petitioner to carry his burden when seeking an advisory opinion or rescission or modification of an existing order should be developed on a case-by-case basis by the ITC and should not be legislated by Congress. Accordingly, the Association does not endorse that portion of the proposed amendment which legislates what evidence may be considered by the ITC in connection with a petition for an advisory opinion of modification or rescission of an existing order.

The Association would be pleased to provide any additional information which may be requested.

Executive Committee
ITC Trial Lawyers Association

JOE KOLTER
4TH DISTRICT, PENNSYLVANIA

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March 5, 1987

COMMITTEE ON
MAR 6 1987
WAYS AND MEANS

Chairman Sam Gibbons
Subcommittee on Trade
1136 Longworth H.O.B.
Washington, D.C. 20515

Dear Chairman Gibbons:

The Trade and International Economic Policy Reform Act of 1987, H.R. 3, is vital to the economic health of western Pennsylvania. With consistently high unemployment, currently approximately 15.6 percent, the Fourth District needs to be relieved from the constant badgering by unfair foreign competition. Without equal access rights and equal workers rights, I don't see how American industries can possibly compete with their foreign counterparts. H.R. 3 answers the question of how to level the playing field.

Conservative estimates place the loss of jobs due to the net effect of trade on the United States at 1.2 million for the period from 1980 to 1984. We cannot sit idly by and watch American workers be displaced by foreigners.

I was compelled to write to register my support of H.R. 3. Action needs to be taken, and this bold move courageously confronts the problem of the devastating trade deficit. I am proud to be an original co-sponsor of H.R. 3 and I am equally proud to have voted for last year's measure, H.R. 4800.

Sincerely,

Joe Kolter
Member of Congress

JK:lmb

K MART CORPORATION
INTERNATIONAL HEADQUARTERS
3100 WEST BIG BEAVER RD.
TROY, MICHIGAN 48084

A. ROBERT STEVENSON
VICE PRESIDENT
GOVERNMENT & PUBLIC
RELATIONS

March 6, 1987

The Honorable Sam Gibbons
Chairman, Subcommittee on Trade
Committee on Ways & Means
U.S. House of Representatives
Room 1102
Longworth House Office Bldg.
Washington, D.C. 20515

Dear Mr. Chairman:

The enclosed written statement is submitted on behalf of K mart Corporation in response to the invitation contained in the Subcommittee on Trade press release of January 28, 1987 concerning hearings on comprehensive trade legislation.

K mart Corporation is the second largest retailer in the United States with more than 2,200 discount department stores throughout the country catering largely to consumers with moderate or limited budgets. In order to offer maximum value to our customers K mart searches the world for the most efficient suppliers of a wide variety of high quality, low cost merchandise. We import about 12% of what we sell.

Much of the proposed trade legislation which is now before the Ways and Means Committee or which may come before the Committee for consideration is very ill-advised and will burden international commerce with little benefit to the U.S. economy. Indeed damage will be done to our customers.

If the Congress adopts trade restrictions, then the United States will cease to be the world's leading trader. Our enclosed statement highlights restrictions to be avoided, such as "scofflaw" Customs sanctions, quota auctioning, and legislated import quotas of any type.

There are a number of constructive proposals under consideration by the Congress and the Administration which we support. Among such proposals are:

- flexible negotiating authority for a comprehensive multilateral trade agreement including unencumbered fast-track procedures and stipulating adequate consultations with Congress;
- streamlining export license procedures and clarifying the Foreign Corrupt Practices Act;
- enhancing export promotion and elimination of unnecessary export disincentives;
- enhancing USDA's export promotion functions and upgrading the Department's role in interagency agricultural trade policy development;
- establishing of international rules to ensure adequate protection of intellectual property rights;
- reasonable time limits for Presidential decisions in national security cases and in 301 cases (corresponding to GATT dispute settlement procedures) and provision for a U.S. trading partner comparative analysis in the annual USTR trade barrier reports;
- supporting a viable worker adjustment program;
- developing competitiveness import statements for major legislative and administrative incentives; and
- promotion of internationally coordinated efforts to reduce LDC debt.

You, your staff or chief counsel should feel free to contact James C. Tuttle or me with any questions at 313-643-1104 or 313-643-1020.

Sincerely,

A. Robert

A. Robert Stevenson
Vice President
Government & Public Relations

I. "SCOFFLAW" SANCTIONS ARE OVERKILL, UNJUST, AND IMPROPER

Of particular concern to K mart Corporation, as major importers of a wide variety of products, is the so-called scofflaw provision contained in section 175 of H.R.3.

This provision would prohibit any person from importing for a three year period if, during any seven year period, such person was either convicted of or assessed a civil penalty for only three separate violations of one or more customs laws involving gross negligence, fraud, or criminal culpability. Orders issued under this provision with respect to multiple customs law offenders which are firms, corporations, or other legal entities apply to all officers and principals of the entity, as well as to any employee or agent of the entity who was directly involved in the violation concerned. Not only is the "person" prohibited from future importing, but the "person" is prohibited from engaging "any other person for the purpose of introducing on behalf of the multiple customs law offender, foreign goods" into the United States.

Our vigorous opposition to section 175 "scofflaw" sanctions is premised on the following flaws in the proposed legislation:

> This is a criminal statute, yet the provision is vague and imprecise in a number of respects including: a) the definition of "convicted," and "finally determined" which have a certain meaning in the administrative penalty proceedings of the Customs Service; and b) the circumstances under which the "offender" is prohibited from purchasing products imported by others;
>
> The exposure to criminal liability of corporations, their officers and principals as the result of a series of non-criminal actions, determined by an administrative agency to constitute "gross negligence";
>
> The improper equation of negligent

> conduct with fraudulent conduct;
>
> The apparent treatment of each entry which contravenes customs law in the manner described as a separate "violation", no matter how many thousands or millions of entries the importer may make in a seven year period;
>
> The inclusion of insignificant, technical, civil violations, and the failure to distinguish them from those resulting in substantial revenue losses or other injuries to the U.S. economy;
>
> The failure to take account of the fact that the distinction between gross and simple negligence under Customs administrative proceedings is often very arbitrary and unpredictable, especially when large corporations with many employees are involved, and obscure or stray facts within the knowledge of one employee are incorrectly considered to be "known" to all corporate employees.

In summary, K mart believes that the "scofflaw" sanctions provision is inherently inequitable and unjust, that it constitutes a denial of due process, and that it ignores the inevitability of occasional human error or misunderstanding in dealing with complex and, more often, imprecise and poorly communicated administrative customs procedures. Large importer corporations such as K mart, whose employees process many thousands of entries every year, would be particularly vulnerable and would be forced to contest formally every mundane administrative entry penalty proceeding, in the courts, to avoid the crushing legislative sanctions resulting from any three "final determinations" of gross negligence over any seven year period. That is unfairness personified. The possibility that totally innocent actions by uninformed, distracted, or innocent employees could result in an importers being cut off from its overseas suppliers of hundreds of products, many of which are not available domestically at any price, at an incalculable cost to the company's stockholders and to the consuming public, graphically illustrates the absurdity of the "scofflaw" sanctions provision.

The existing criminal and civil laws are more than adequate to deal with true criminal activity and with any civil misfeasance or malfeasance. The "scofflaw" sanctions proposal is nothing but very thinly disguised *in terrorem* harrassment of the trading community, and should be rejected outright by this Committee.

II. QUOTA AUCTIONING WOULD BE THE LARGEST TRADE FOLLY OF ALL TIME

K mart would like to call to the Committee's attention to its opposition to the public auctioning of import quota licenses.

While the Trade Agreements Act of 1979 has authorized the auctioning of quotas in certain circumstances, that authority has never been used. Section 122 of H.R.3 would require that any monies raised through such an auction be transferred to the proposed Adjustment Assistance Trust Fund. Other bills would *require* the auctioning of quotas through an import licensing procedure as a means of raising internal revenue.

The single most egregious derogation to GATT multilateral trade principles is the import quota. Article XI of GATT prohibits general use of import quotas. At present, America's trade regime is burdened enough by the import quota abberation, especially in the field of textile and clothing trade. Import quotas, where used, are deemed to be temporary adjustment measures. Textile quotas in one form or another have been present for over 25 years, since 1962. The addition of quota auctioning to normal quota administration would be unworkable in pragmatic terms and, most regrettable, further ensconce import quotas as a permenant trade fixture.

In theory, the auctioning of quota restrictions may be appealing to some economists who see it as a way of somehow capturing the "profit" from inimical import restrictions to the U.S. Treasury, and of making the cost of those restrictions somehow "transparent" for consumers and voters. While those may be worthy goals, they are doomed by false assumptions. The cost of quota auctioning in terms of disruption to everyday international commerce of the U.S. would be unacceptably enormous.

We have seen in the past several years the increasing growth of administered trade as bureaucratic interference by the Customs Service and Commerce Department in a widening range of normal international commercial transactions has become commonplace interference. The auctioning of import licenses would create absolute chaos, as neither of those agencies (or any set of agencies) has the resources or capability to implement such a controlled trade regime. Business cannot flourish in an environment of uncertainty, or of governmental control. The examples of non-market economy countries and the dismal results of their attempts to compete on an overall basis with the West are testimony to what happens were commerce is governed by bureaucratic whim or iron grip.

The prospect of manipulation of prices and quantities by those with enough economic clout to control large blocks of quota licenses, of potential fraud, and of the development of black markets for unauthorized resale of quota are frightening to contemplate in a trading nation as enlightened as the U.S. Lower-end and moderate priced imports could be driven from the marketplace by the escalated cost of import quota licenses if the Congress were to copy the folly of overseas regimes of quota auction.

The risks of such a radical departure from established market practice and procedure are too great for whatever theoretical benefits might be concocted for governmental administration of import market activity.

III. ANTIDUMPING AND COUNTERVAILING DUTY LAW REVISIONS ARE UNNEEDED

The Congress has before it other proposals, some contained in H.R.3, some in other bills, to modify the trade laws of the U.S., including the antidumping and countervailing duty provisions, Sections 201, 301, and 337. It seems to us that, before considering the merits of these new legislative initiatives, the Subcommittee must recall the recent history of trade legislation and determine whether further amendmends are called for.

There have been three major modifications to U.S. trade law since the 1974 Trade Act, the most recent having been enacted barely two years ago. Taken as a whole, these statutes have completely rewritten almost all of the significant provisions of U.S. trade law. Some, such as the antidumping and countervailing duty laws, were extensively modified on all three occasions, in 1974, 1979 and 1984. Not only have these provisions been substantively amended, but new, complex, and very expensive procedures have been layered one on top of the other - almost always with the objective of: 1) making it more likely that trade restriction or import protection will be granted; 2) assuring that decisions will be made more quickly without regard to correctness, quality, or clarity; and 3) providing that administrative discretion which results in sensible solutions short of the imposition of trade restrictions or import protection will be further curtailed.

These changes have inevitably meant that those engaged in international commerce find it more difficult to have their interests fully considered by knowledgeable officials of the U.S. government. Administration of the trade laws has become ever more capricious as the agencies concerned seek to deal with an artificially increased work load and more complex and cumbersome procedures, without adequate resources and without adequate analysis.

The number of administrative trade investigations has increased dramatically over the last five years, as has litigation before the Court of International Trade seeking to challenge administrative determinations. The cost of all this increased legal activity, in terms of attorneys fees, government resources, higher prices to consumers and inefficiencies forced on U.S. industries themselves is beyond calculation. We note that the International Trade Commission has estimated that the President's so-called Voluntary Export Restraint Program (import quotas) on steel resulted in steel prices in the U.S. which were 25 to 56 percent higher than foreign prices in early 1985, and will cost U.S. exporting industries $15.7 billion in lost export sales through 1989 (The Effects of Restraining U.S. Steel Imports on The Exports of Selected Steel-Consuming Industries Report on Inv. No. 332-214, December 1985, U.S.ITC Pub. 1788). The overall cost of import controls in 1984 for seventeen U.S. industries, was a staggering $56 billion, according to the Institute for International Economics, (Trade Protection in The United States: 3) Case Studies, Hufbauer, Berliner & Elliot, I.I.E., March 1986).

One might argue that these costs were acceptable if in fact the procedures, and the trade restrictions they result in, were successfully ridding the marketplace of "unfair traders" as defined by U.S. law, international agreement, or popular mythology -- and if the U.S. trade balance position were improving. However, the opposite appears to be the case to date. There has been no discernable effect on our merchandise trade balance, nor any diminished cry for protection from those domestic industries which have sought and already obtained the greatest amount of artificial market protection. On the contrary, these are the very interests which are leading the effort for still more "reform" of the trade laws. By "reform," they mean revising definitions of what is "unfair" to include a wider range of accepted commercial and governmental practices, as well as additional procedural burdens on legitimate and economical international trade. There appears to be absolutely no empirical evidence that U.S. trade laws, after constant "tightening up" over the past dozen years, have had any significant effect on U.S. competitiveness.

IV. COMPETIVENESS NEEDS NUTURE, NOT TRADE RESTRICTIONS

Spokesperson for interests seeking further legalized trade protectionism and restrictions will maintain that the failure of such industries to regain competitiveness, despite past U.S. government action on their behalf, results from an unwillingness on the part of the Executive Branch to enforce the laws properly -- as Congress intended them. That assertion is complete nonsense. If a bias exists in trade law administration, it is clearly in favor of domestic petitioners.

The basic problem which trade restrictionist interest, and most often the Congress and Executive Branch fail to acknowledge (by their actions, if not their words), is that the deterioration in the U.S. trade position has little, if anything, to do with foreign "unfair trade practices" and everything to do with U.S. domestic policies and industrial market practices. The Congress and Executive Branch have, to date, largely ignored the question of how to create a stable macroeconomic environment for growth and for encouraging the competitiveness of U.S. industry when passing legislation or setting policies. Similarly, industry and labor have often ignored efficiency and cost control in order to achieve other objectives. We are pleased that enhancement of the competitiveness of U.S. industry is the stated objective of H.R.3, but unfortunately, most of the substantive portions of the bill have nothing to do with that objective.

No amount of tinkering with the trade laws will restore comparative market advantage where it has been lost due to misguided policies. Mistaken emphasis on alleged unfair trade practices of our trading partners as the cause of the decline of certain U.S. industries has prevented the Congress and Executive Branch from considering effective actions which could assist such industries in actually meeting or adjusting to competition, instead of trying to hide from it.

V. "PRIVATE RIGHT OF ACTION" IS UNNECESSARY AND DANGEROUS TO LAWFUL COMMERCE

One particularly anti-competitive and wrong-headed proposal is the so-called "private right of action" provision contained in Section 138 of H.R.3, which would amend the Revenue Act of 1916 to provide that an interested party can bring an action for damages as the result of importations or sales which are found to be dumped, within the meaning of the current antidumping law.

The clear intention of this legislation is to provide antitrust style private relief to companies which believe they have been impacted by imports, without requiring that the complaining parties be able to sustain the burden of proof required by the antitrust laws.

It is important to clearly understand what is at stake here. The U.S. is the world's foremost trading nation. Even after the deterioration in our trade position of the past several years, the U.S. has maintained its position as the world's leading exporter. We are also the world's leading importer. The importance of international commerce has grown consistently in recent decades in relationship to the size of the U.S. economy as a whole, reflecting the every-increasing interdependence of the world's economy. The U.S. has been in the forefront in the building of the post-war multilateral trading system which has made this interdependence possible. Despite misconceptions to the contrary, which are unfortunately often reflected in the halls of Congress, the U.S. has been a major beneficiary of this system.

It is therefore incumbent upon the U.S. to tread very lightly when considering steps which would contribute to the dissembly or demise of this system. Section 138, and similar proposals to allow a private right of recovery for dumping would, without question, bring much international trade and negotiation to a standstill.

It is from the point of view of the U.S., as a major exporting nation, that it is easiest to explain why this proposed legislation is not in the national interest and would have disastrous consequences for the U.S. economy.

Many of those lamenting the decline in the international competitiveness of certain U.S. industries tend to portray the U.S. market as the dumping ground for the rest of the world, and to blame this decline on purportedly unfair trade practices of foreign producers. The Judiciary Committee Report accompanying S.1655 (a similar proposal introduced in the 99th Congress) states as much. It says ;

> The unlawful dumping of foreign goods, which involves sales in the United States at artificially low prices, has become a serious threat to American industries. Enormous quantities of dumped and subsidized products and articles which violate the customs laws, enter the United States each year (S. Report 99-295, May 13, 1986).

Leaving aside the origin of those statements, the impression conveyed is one of the U.S. as the victim. What is never addressed, however, is the U.S. as perpetrator. According to data obtained from the Office of the U.S. Trade Representative, in a recent four year period more antidumping investigations were initiated by the world's importing countries against exports from the U.S. than from any other single country, while for 1985 the U.S. ranked second, just behind

Japan.

Amongst the U.S. products recently subjected to antidumping remedies by our trading partners have been battery-operated work trucks, monoammonium and diamonium phosphate, outboard motors, urethane prepolymers, photographic printing papers, high voltage porcelain insulators, two-door metal storage cabinets, certain photo albums, abrasive resistant steel pipe, frozen food dinners, and charcoal briquets. Actions are pending against film laminate, silicon sealants, potatoes, certain oil and gas well castings, and polyester yarn.

Are these American producers criminals? Are they acting unlawfully? Are they undermining foreign economies? They are not. Price discrimination in different markets is not and has never been considered under U.S. or international law to be a criminal or unlawful practice.

Businesses worldwide, including those here in the U.S., price in response to the specific, pragmatic conditions in the foreign markets into which they must sell. If they behave in a predatory way and seek to injure competition or trade, they are behaving in an unlawful manner, and they are subject to antitrust laws here and abroad with the criminal and civil penalties attendant to conviction or judgment of anticompetitive practice.

However, antidumping (and countervailing duty) laws are not, nor are they permitted under international agreement, to be punitive in nature. They are remedial duty or price adjustments since international price competition, when not predatory, has been considered as healthy and desirable. But, sanctions or penalties are inappropriate since they would stifle proper and innovative competition. The Congress must anticipate that our export products will be treated overseas in the same way as imports into the U.S.

are treated, if the legislation is enacted. This is a major concern to American producers, who have more to lose than any foreign producer since, as noted, the U.S. is the world's leading exporting nation.

Sanctions of this kind contained in this bill would cause major disruptions to international commerce. But why, proponents of this measure might ask, shouldn't exporters and importers, whether into the U.S. or foreign markets, be held accountable for the injury caused by their price discrimination.

In the first place, they are accountable under certain carefully prescribed limits contained in international agreement. Permitted duty or price adjustment remedies are limited in order to prevent unilaterally imposed remedies from becoming unregulated non-tariff barriers which stifle the flow of innovative trade and upset the delicately balanced array of commitments and benefits under the mutilateral trading system.

Thus, responses to "dumping", that is sales at less than fair value, which cause material injury are limited by Article VI of the General Agreement on Tariffs and Trade (GATT) itself, and the Antidumping Code subsequently negotiated under its authority. The existing antidumping laws are proven effective and can have profound effects on commerce while operating for the most part within the pro-competitive limits imposed by the multilateral trading system. Attempts by proponents of a private right of action to argue that legal damages to private parties, as provided for in the bill, do not constitute violations of U.S. obligations under these agreements are not persuasive. U.S. exporters would certainly consider any "damages" payable to foreign competition companies as a market penalty, regardless of the fact that they would not pay into the treasury of a foreign government. All of the Executive Branch agencies principally concerned with international trade have clearly stated that a private right of action for damages as a result of dumping violates the international obligations of the U.S. in numerous ways. We will not repeat their position here. [See letters of Ambassador Clayton Yeutter, U.S. Trade Representative; Robert Kemmit, General Counsel, Department of Treasury; John R. Bolton, Assistant Attorney General, Department of Justice; Douglas A. Riggs, General Counsel, Department of Commerce, included in Senate Report 99-295, Report of the Committee on the Judiciary, accompanying S.1655, May 13, 1986.] Clearly, however, the Committee must consider those views as compelling with regard to this question.

Leaving aside the incompatability of the proposed sanctions with the GATT, damages should not be available as a remedy under the circumstances set forth in section 138 for dumping as a matter of sound economic policy and equity.

The private damage provision is based on the presumption that competition from imports should be treated differently from other competition. This is contrary to the concept of "national treatment", a cornerstone of the modern trading system which guarantees that all producers, no matter where located, will have the same opportunity to compete for entry into a national market. The principle of national treatment is embedded in our international obligations through Article III of GATT and a myriad of bilateral commercial treaties. It is critical to American exporters and multinational corporations operating in countries all over the world. The U.S., as does other countries, maintains an array of antitrust laws to protect the domestic marketplace from unfair trade practices, including predatory pricing practices from all sources, domestic or foreign. It was to clear up any possibility that imports which were predatorily priced might not be subject to these laws that section 801 of the Revenue Act of 1916 (15 U.S.C. §72, often referred to as the Antidumping Act of 1916) was enacted. In addition, both the Sherman Act (15 U.S.C. §1 & §2) and the Wilson Tariff Act (19 U.S.C. §8) clearly cover imports. If there is some question as to whether imported products are subject to the U.S. antitrust laws, then Congress could consider appropriate amendments in that field.

But, just as clearly, the Section 138 of H.R.3 is not such an amendment. It differs significantly in both substance and procedure from the laws which cover any domestic or foreign predatory commerce, and would therefore create a situation in which there were more stringent restrictions layered on import competition than on domestic competition in the U.S. marketplace.

Section 138 has no requirement for a showing of intent. Those involved in international commerce would be acting unlawfully and would be vulnerable to damages without any showing that they intended to injure a U.S. industry, or to restrain competition, or monopolize trade. Furthermore, there is no requirement in the proposed legislation for a showing that the Acts in question had the anti-competitive effect of monopolizing or restraining trade, or indeed had any impact at all upon competition in the U.S. market. In addition, administrative determinations by the Department of Commerce and the International Trade Commission would be given prima facie effect in establishing the elements of sales at less than fair value and injury, despite the fact that procedures before those agencies do not afford parties - most particularly foreign manufacturers, importers, and exporters - the full range of rights available in adjudicative proceedings conducted under the Administrative Procedures Act or the Federal Rules of Civil Procedure in courts of law. Discovery and cross-examination are unavailable, as are the affirmative defenses and counter-claims available in antitrust proceedings in courts of law.

American manufacturers and exporters would object vigorously if they were denied such basic procedural safeguards and evidentuary rules applicable in foreign courts for normal civil actions in those courts, in cases where their competitors sought damages for violations of dumping laws. Yet, that is precisely the situation which would be created in the U.S. by any adoption of section 138.

It appears that the draconian penalties to be imposed are particularly severe, given the meager degree of any culpability required for imposition of these penalties. It is often difficult or impossible for a foreign manufacturer, exporter, or importer to know before the fact whether importations are at less than "fair value". The calculation of foreign market value, and the adjustments to it, and to U.S. price by the Department of Commerce are unpredictable guesses at best. The existing requirement that home market sales be at prices above fully allocated cost (not marginal cost), and the use of the highly arbitrary constructed value as a substitute for such sales when they are not above fully allocated cost, can create substantial dumping margins even where export businesses are behaving in a fully ethical and economically rational manner.

Similarly, importers have no knowledge of costs or prices in the home market or third countries when they buy overseas. Yet, this proposal would direct the courts to calculate damages based on "losses" suffered during the three year period prior to publication of a dumping order. This element of total unpredictability, coupled with the potential retroactive assessment of very significant monetary damages, fully illustrates the stifling, anticompetitive chill this legislation would have on international producers and traders here in the U.S.

Those who may be liable in a very major way would have no way of knowing if they are violating the law before the fact. They also would have no guidance for determining what level of damages might be assessed against them. The legislation provides no insight as to how a court should calculate the "damages" to an individual domestic producer. Any relationship between the dumping violation and the financial situation of the domestic "interested party" would be wholly tenuous at best. An administrative determination of material injury by the International Trade Commission, which requires almost no nexus between the less than fair value sales and the alleged injury, will lift from a plaintiff any requirement that it show that it has been, in fact, injured. Presumably, every producer in the domestic industry producing a like product found to have been "dumped" could recover, whether or not it participated in the administrative proceedings before the International Trade Commission and the Department of Commerce.

No business can afford to face such uncertainties. Price competition from imports, and imports as such, would simply disappear for a wide variety of products with a resulting significant increase in U.S. prices. Retaliatory action by our trading partners in the form of similar legislation would be ensued almost immediately. The end result would probably be the artificial creation of a series of international cartels that set prices of widely traded products so as to avoid legal actions, or to resolve by "out of court settlements" those already initiated, by setting minimum prices or quantitative limitations for the products concerned in international trade channels. Is this what the citizens need?

K mart can think of no more anticompetitive legislation than the present proposal. The U.S. economy, and those of the other major trading nations of the world, would suffer greatly while receiving little, if any, beneficial effects.

IV. SUMMARY

There is no evidence that any of the proposed changes discussed herein will provide any net benefit to the U.S. economy while further amendments will certainly cause extensive uncertainty and increased bureaucratic interference in the international marketplace.

If the Congress abandons the multilateral trading system to pursue unilateral solutions to complex international trade issues, trading will decline and maybe cease to exist in practical terms. Unilateralism can take many forms -- tariff increases, quota restrictions, voluntary restraint arrangements coerced by threats of more restrictive actions, or legalized protectionism which attempts to disguise the isolation of national markets by creating complex legal procedures to redress allegedly "unfair" trade practices. Results of trade restrictions will inevitably be the same - the shrinkage of the world's economy and a lower standard of living for all on the planet, especially those of us here in the U.S.

Few of the issues we face today in seeking to redress our persistent trade imbalance are susceptable to quick government solutions.

We must also recognize that we are quickly being moved toward "administered trade" in this country - a situation in which bureaucrats in administrative agencies of the government decide what products will flow in international commerce and how much they will cost. While we have been deregulating the domestic economy, we have been moving in the opposite direction with the increasing segment of our gross national product accounted for by international commerce. We do not believe further trade restrictions can enhance the competitiveness or success of U.S. industry in what is an interdependent world market place.

Respectfully submitted,
K MART CORPORATION

By: A. Robert Stevenson
A. Robert Stevenson
Vice President
Government and Public Relations

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

Statement of Joseph H. Blatchford
On Behalf Of
The Mexican Carbon Black and Cement Industries
March 6, 1987

On behalf of the Mexican Cement and Carbon Black Industries, I wish to go on the record of these proceedings as being in strong opposition to the natural resource subsidy provision proposed in H.R. 3 and other related House bills. This statement is submitted in response to the prior oral testimony delivered during the House Ways and Means Subcommittee hearings. My intent is to put the true purpose and potentially damaging effect of this type of legislation into proper perspective. There are several compelling reasons for rejecting this type of legislation. First, natural resource trade legislation is contrary to fundamental U.S. trade policy and the international consensus as to what constitutes a countervailable subsidy. All of America's major trading partners would consider the legislation a violation of Article 11 of the GATT Subsidies Code, where the standard for determining the existence of countervailable subsidies is dependent solely upon whether the subsidy is provided to a specific industry or group of industries. The United States would almost certainly lose a GATT challenge to this legislation if it were enacted.

Fellow GATT Contracting Parties would also be prompted to retaliate against U.S. exports. Numerous products that the U.S. exports in substantial quantities--such as agricultural goods, textiles, petrochemicals, and high technology products--would be subject to potentially devastating retaliatory duties.

Even if our trading partners do not retaliate by way of a GATT challenge or the enactment of similar protectionist legislation, there would be a strongly negative effect on the market. Key segments of the U.S. export sector depend heavily on products made from natural resource imports which would be penalized by natural resource subsidy legislation. For example, the U.S. agriculture, petrochemical and forest products industries all use basic products to make more sophisticated products for export. If the prices of these basic products imported from other nations rise as a result of draconian countervailing duties, the prices for the U.S. end products made from these will also increase, destroying their competitiveness in the world market. The ironic result of this purported trade "reform" will thus be a substantial worsening of the U.S. balance of trade deficit. Adoption of this legislation in violation of the GATT would threaten America's own industries which presently benefit from subsidies. Examples include high tech firms, the aeronautics and space industries, manufacturing industries, and many other businesses that would be exposed to retaliatory actions. These are currently our most successful exporters.

Finally, adopting this type of legislation would amount to accepting the concept of countervailing natural comparative advantages, an unsupportable and dangerous position. Broadly available subsidies do not distort the allocation of resources within an economy. If a country has a genuine cost advantage in the production of a natural resource, there is nothing unfair in its development of that resource to benefit its domestic producers. So long as the price at which the natural resource is available to domestic producers is above cost, the fact that the resource in question can also be sold at a higher price on world markets is irrelevant.

The attempt to redefine a subsidy as the difference between the domestic price and the world price is, thus, inherently misguided. It merely reflects the dissatisfaction of certain industries in the United States with the fact they do not happen to share in certain natural advantages enjoyed by those in other nations. More important, this policy contradicts fundamental principles of trade and economics by, in effect, seeking to counteract the facts of nature, geography and relative development. Taken to its logical extent, the effect of such an approach would be to bring trade to a halt, a result never contemplated by the trade laws.The proper function of trade law is to eliminate unfair barriers to free trade in a manner consistent with recognized international trading rules.

Over the past several years, many domestic U.S. industries, including, for example, the cement, carbon black and ammonia industries, have attempted to employ the political and administrative processes to preclude, limit or eliminate foreign competition. They have filed antidumping and countervailing duty petitions and have sought protection in the form of natural resource subsidy legislation. Others have actively pursued legislative "Buy America" programs.

Many of these efforts ignore the fact that the goods or commodities in question are needed to satisfy growing demand in the United States for these products - demand which cannot be satisfied by U.S. domestic capacity. Consequently, to cite one expample, rather than posing a threat of injury to the domestic cement industry, imported cement, including that from Mexico, functions to serve the needs of the American economy.

The results of the recent International Trade Commission's preliminary investigation into allegations of cement dumping by eight countries, including Mexico are a case in point. Not only was there no injury to United States cement producers, but the Commission also noted that "a significant proportion of current imports is attributable to the domestic producers." (ITC Investigation Nos. 731-TA-356 through 363 Preliminary, December 12, 1986, p. 22.) The ITC also concluded that: "Our examination of the financial data indicates that the domestic industry is not experiencing material injury, but rather is thriving." Not only is the U.S. cement industry performing extremely well, it is the same U.S. industry which has been responsible for increased imports. In the case of Mexican exports, at least 80 percent of cement and 96 percent of clinker is sold to U.S. producers. In fact, it is estimated that U.S. producers account for between 75 to 80 percent of total U.S. imports of cement and virtually all imports of clinker. Without cement imports, prices to U.S. consumers will increase, construction associated jobs will be put in jeopardy and port and transportation sector jobs will also be threatened.

In sum, ill-advised natural resource subsidy legislation which addressed the wrong problem out of context and out of perspective would be a harmful addition to our trade laws, ultimately bringing the greatest harm to U.S. consumers, laborers and farmers in industries which require imports or which are export oriented.

I encourage you to oppose passage of such legislation.

Thank you.

TESTIMONY SUBMITTED TO THE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
by
DAVID N. GEISE, PRESIDENT, FURMAN FOODS, INC.
A MEMBER OF AND ON BEHALF OF THE
NATIONAL ASSOCIATION OF GROWERS AND PROCESSORS FOR FAIR TRADE

March 5, 1987

The National Association of Growers and Processors for Fair Trade submits this written statement to request amendments to improve laws which address unfair trade practices, specifically subsidies.

U.S. Tomato Growers and Processors have lost substantial business as a result of subsidized imports from the European Community. As our Association title indicates, our primary purpose is to promote Fair Trade. The subsidies paid by the European Community on canned tomatoes, tomato paste and tomato sauce are unfair and thus, the focus of the Association.

U.S. imports of processed tomatoes increased in only 5 years, 1980-1984, by more than 500%, from about 67 million lbs. to more than 412 million lbs. In 1980, imports accounted for only 3% of U.S. consumption. By 1984, imported tomato products accounted for 16% of U.S. consumption (Appendix I).

Subsidized tomato products from the European Community, specifically Italy, account for about 45% of U.S. canned tomato imports and about 10% of U.S. tomato paste and tomato sauce imports.

These unfair subsidies have curtailed the U.S. tomato processing industry, impacting growers and processors in 23 states. The negative impact is not limited to the growers and processors. It affects can manufacturing plants, paper mills, glass factories, printing establishments, sugar factories, trucking firms, railroads and many other supporting industries forming the infrastructure serving the tomato industry.

The increased percentage of imported tomatoes consumed in the U.S. has caused a reduction in acres planted and price received by U.S. tomato growers. According to the U.S.D.A. Crop Reporting Board, acres planted have decreased 18% and prices received decreased 11% for the period 1982-1986 (Appendix II). It has been estimated that the American economy had lost $339,839,285 last year due to the loss of tomato production to imports. These losses directly impact the American farmer, factory laborers and all support industries.

Studies conducted by Kirby Moulton and Leon Garoyan, Economists from the University of California, indicate the extremely high subsidies in the European Community (Appendix III).

Italy, for example, which accounts for almost half of the increase in world tomato production for 1980-1985, has done so on the strength of extremely high subsidies provided by the European Community since 1978. During 1980-1985, the subsidy paid to Italian paste processors reached an incredible $80.40 U.S. per ton. In more recent years, the subsidy has been reduced, but in 1985 still gave the Italian processor a cost advantage of up to $25.87 U.S. per ton over the U.S. counterpart.

By becoming members of the European Community, Spain and Portugal have become eligible for subsidies to growers and processors. Spain's significance is emphasized by the fact that they increased tomato output by a higher percentage than any other country during 1984-1985. Spanish whole peeled tomatoes landing on the Atlantic Coast at $2.00 per case below U.S. list prices have particularly concerned smaller canners in the Eastern states.

Many people in Washington blame the value of the dollar for our problems with imports.

During the period of March 1982 to March 1985, the dollar rose 48% compared to the Italian Lira. Imported canned tomato products during this period only increased 1% (Appendix IV). These facts prove that the real increase of tomato imports is a direct result of unfair subsidies and not the increase in the value of the dollar.

Although there had been countervailing duties on subsidized tomato products imports, the countervailing duties were terminated in 1980 after the Tokyo Round Agreements imposed the requirement of a "material injury" determination as a pre-condition for such duties.

Within two years after the U.S. amended its countervailing duty law, the share of the canned tomato market accounted for by imports rose from 3% to 16%. This surge in imports was fueled by European Community subsidies.

The results are clear that the U.S. tomato industry has been injured by imports which are subsidized. We seek your assistance in stopping this unfair competition. If this important industry is to be maintained, the U.S. government must assure that it makes the market FAIR by imposing countervailing duties on subsidized imports.

The necessary steps should be taken to amend the GATT rules and U.S. laws to countervail subsidized imports - which are unfair - without an injury test.

David N. Geise
President
Furman Foods, Inc.
R. D. #2
Northumberland, PA 17857
717-473-3516
on behalf of
The National Association of
Growers and Processors for
Fair Trade

APPENDIX I -
TOMATOES, PROCESSED: 1/ U.S. PRODUCTION, EXPORTS, IMPORTS AND APPARENT CONSUMPTION

(QUANTITY IN THOUSANDS OF POUNDS)

YEAR	PRODUCTION	EXPORTS*	IMPORTS*	APPARENT CONSUMPTION	IMPORTS % OF CONSUMPTION
1980	1,929,616	70,449	66,997	1,926,164	3%
1981	1,867,305	67,848	171,546	1,971,003	9
1982	2,266,882	50,150	386,872	2,603,604	15
1983	2,102,555	45,521	371,077	2,428,111	15
1984	2,312,822	39,806	412,613	2,658,618	16

1/ Includes Tomato Puree, Paste and other Canned Tomatoes.

* Includes Tomato Sauce.

Source: U.S. International Trade Commission

APPENDIX II - Tomato Acreage and Price/Ton in the U.S.

Year	Acres Planted	Price/Ton
1986	260,590	$63.90
1985	269,860	66.30
1984	298,600	67.40
1983	299,050	67.60
1982	317,640	71.60

Source: U.S.D.A. Crop Report
Vegetables - Acreage, Yield, Production & Value

APPENDIX III - ESTIMATED SUBSIDIES PAID TO TOMATO PASTE PROCESSORS IN SELECTED COUNTRIES, 1985

COUNTRY	PROCESSING SUBSIDY	
	$/TONNE	$/CASE
Italy	198	3.83
Greece	138	2.67
Spain	7	0.14
Portugal	21	0.41
Turkey	19	0.37
Addition to base subsidy for that part of volume between:		
$2MM & $10MM	17	0.33
$10MM & $30 MM	34	0.66

a/ Subsidies paid have been recalculated from the raw product equivalent value in the basic source at 6.5:1.

b/ Equivalent 6/10 cases converted at 51.75 cases/tonne.

c/ Subsidies in Spain and Portugal were slated to rise to $100 per tonne in 1986.

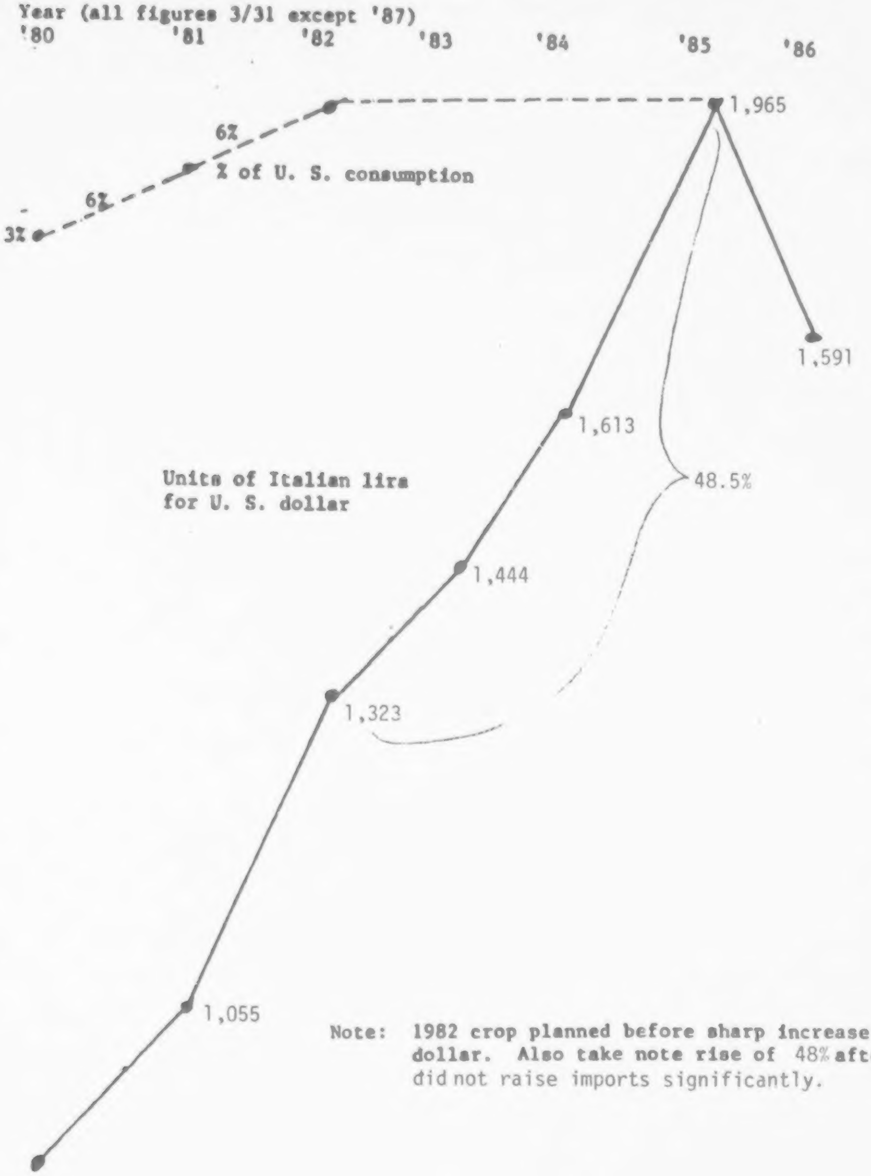
d/ Turkey's export subsidies are income credits; the values presented are the gains in after tax income based on a income tax rate of 46 percent and export subsidy rates existing in 1985, and a product price of $600.

Sources: Moulton, K. and L. Garoyan, An Update of Global Processing Tomato Production and Trade, University of California, Cooperative Extension, Berkeley, 1986.

Government of Turkey, Official Gazette, December 26, 1985, pp. 53 - 54.

APPENDIX IV -

**Total imports of all tomato products as per cent of U. S. consumption
1980-1982 = 12% increase**



Note: 1982 crop planned before sharp increase in dollar. Also take note rise of 48% after 1982 did not raise imports significantly.

National Association of Wheat Growers
415 Second Street, N.E., Suite 300, Washington, D.C. 20002, (202) 547-7800

March 5, 1987

RECEIVED
MAR 6 1987
SUBCOMMITTEE ON TRADE

The Honorable Sam Gibbons, Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The National Association of Wheat Growers commends the Subcommittee for its series of hearings on trade policy revisions. Our association devoted considerable attention to trade and export policy during our annual convention, in January. I would like to share with you some of NAWG's perspectives on the issues your subcommittee will soon address, and respectfully request that this letter be made part of your hearing record.

NAWG believes the following principles should guide U.S. trade policy:

- The United States should move swiftly and aggressively, under existing authority, against unfair trade practices that harm American businesses and workers.
- The federal government should move quickly and comprehensively to address important factors contributing to the U.S. trade deficit, including the federal budget deficit and relative dollar exchange rates.
- U.S. trade policy should be developed in a comprehensive manner, recognizing that exports create jobs. It should be U.S. trade policy to avoid actions that benefit one sector to the detriment of others and to the detriment of the national interest.
- Any new trade legislation should be consistent with U.S. international obligations and should have the effect of strengthening the president's ability to expand U.S. exports, rather than creating new U.S. import restrictions.
- U.S. international policy must recognize the critical need to enhance our exports and to minimize export disincentives.
- U.S. trade policy should not undermine the economies of our trading partners in developing countries. Such actions only shrink long-term U.S. export markets and threaten the international financial system.
- The United States should actively promote comprehensive multilateral negotiations to expand trade in goods and services, and should work toward strengthening the international economic system. Fair and open trade demands reciprocal trading opportunities.

Wheat growers are firmly committed to exports: over half of all wheat produced in the U.S. will be exported this year. At the same time, wheat growers have seen exports shrink in recent years: In 1981/82 nearly two-thirds of America's wheat crop was shipped overseas. This decline, as you know, is not unique. Most other agricultural commodities have seen export volume, market share and consequently prices decline during the 1980's.

We hope you will subject all trade legislation to this test: Will it increase U.S. exports and competitive opportunities? If legislation does not make the United States more competitive, it does not deserve your support. But a trade bill that expands markets instead of closing them, that broadens the horizons of U.S. trade rather than narrowing them -- such a bill can be very good for America. Specifically, we hope you will support legislation that ...

- Provides flexible authority to negotiate in the new GATT round, while setting out firm parameters for conducting negotiations and mandating more timely and effective consultation with Congress and the private sector
- Sets reasonable time limits for action in Section 301 unfair trade cases, and allows reciprocal trade opportunities to be a factor in such cases
- Recognizes the need for coordinated international efforts to resolve the Third World debt crisis, one of the largest single factors behind the U.S. trade deficit

Among proposals aimed directly at U.S. agricultural competitiveness, we believe the following are particularly important:

- An increase in personnel and market development funding for the Foreign Agricultural Service of USDA
- An increase in levels of food aid as a vital part of U.S. foreign and trade policy
- As a negotiating goal in the Uruguay Round, a phaseout of agricultural export subsidies and the introduction of restraints on surplus production by other exporting countries
- An explicit U.S. policy in opposition to multilateral loans which increase production of agricultural commodities already in surplus, with appropriate sanctions if such loans remain standard policy at international lending institutions

We also feel a few actions should be carefully avoided in trade legislation, among them ...

- Proposals to require retaliation against countries deemed to have excessive bilateral trade surpluses with the United States; we would remind you that almost all the countries so identified are major purchasers of agricultural commodities from the U.S.
- Proposals to place undue limits on Presidential discretion to make decisions on Section 201 or 301 cases; it seems clear that the President can take into account the national economic interest in a way that bodies with a more limited jurisdiction, like the International Trade Commission, cannot
- Proposals to provide sector-specific import relief or bilateral reciprocity legislation for textiles and other industries

Mr. Chairman, we appreciate the chance to comment, and look forward to working with you. We reiterate that the best trade bill is one that boosts exports, rather than restricting imports. Open trade is, in the end, the best means of assuring fair trade. The United States in its trade posture should be neither a patsy nor a bully; we should stand firm for our rights, and be willing to give both customers and competitors a fair deal in return.

Sincerely yours,

Jim Miller
President

COMMENTS OF THE NATIONAL CONFECTIONERS' TRAFFIC CONFERENCE, INC.

The National Confectioners' Traffic Conference, Inc., is a conference composed of manufacturers, shippers and importers of confectionery and confectionery products. The delegates from the member companies are the persons with the member companies responsible for arranging the transportation of products from the point of manufacture or importing to warehouses, wholesalers, retailers and final points of distribution. As such, they are users of the surface transportation facilities and services of this country and are vitally interested in the effect that government regulation, deregulation, laws and agencies have upon such surface transportation.

There is presently before Congress and this Administration the issue of whether and how further deregulation of the motor carrier industry should take place. Because there are several major issues, the NCTC feels it essential to address those of utmost importance to shippers in general and its members in particular.

First, it is critical that any transportation scheme include a requirement of national, uniform standards of cargo liability. In today's environment of national and international competition, shippers seek the efficiencies of a single standard, not the chaos of a hodgepodge of state laws compounded by carrier designed regulations.

The reality is that the American court systems are already overburdened and need less litigation, not more. A retreat from a single standard of cargo liability would greatly aggravate the burden on the courts because each new law and regulation would be susceptible to litigation. A single standard would facilitate an understanding of the system by its users and participants.

Actually, any new law should require a mandatory arbitration program to help alleviate the burden on the courts. Such a system could be patterned after that created by the Household Goods Carriers Act of 1981.

However, even an arbitration program would work quicker, better, and fairer if it had a single, national standard to interpret instead of multiple laws and regulations.

Secondly, the national, uniform standard of cargo liability should include a continuation of the Carmack Amendment standards. Not only would a continuation of these standards allow the application of years of precedent and obviate the need to litigate all the aspects of a new standard, but they are also fair and make good sense.

The party in control of the freight should remain liable for damage to or loss of the cargo unless it can clearly show that the cause of the damage or loss falls within the ambit of a statutory exemption or was caused by someone else. This system provides checks at each stage of transportation as cargo changes hands and is most likely to result in the early detection of damage and to result in the ability to identify the party responsible for causing the damage.

The typical scenario involves a bill of lading that shows that the cargo was picked up in an undamaged condition, but that there is damage to it at the delivery point. Present standards impose liability on the carrier unless it can prove the loss was caused by someone else or it falls within a statutory exemption (Act of God, war, etc.)

The carrier trains its drivers to inspect the product before accepting the product and executing the bill of lading to the effect that the goods are undamaged. Consequently, the carrier has its trained agent on the scene to protect its interest.

The imposition of liability is extremely important to the members of NCTC. A large percentage of their traffic requires temperature control while in transit. A temperature that is either too cold or too warm can harm the product.

When the motor carrier transportation can take several days, it is essential that the carriers feel a true sense of responsibility for the cargo and its well-being. Otherwise, there would not be the same commitment to its careful transportation and the willingness to incur the expense to accomplish that.

Further, the responsibility for the loss should be for the entire loss occasioned, absent a clear agreement to the contrary. Even then, there should be a requirement that a shipper can obtain from a carrier a commitment for full liability at a reasonable cost.

Any other system is the same as no requirement of liability because the only point of discussion is the degree of liability assumed by the carrier. If the carrier is free to select the degree of liability, soon it will be so small it will be meaningless. Moreover, a partial liability standard would promote misunderstandings and litigation.

Next, if a national, uniform standard of cargo liability is to have real meaning, it needs to apply to all transportation taking place in this country. The suggestion that there should be different standards for regulated interstate and foreign commerce from exempt interstate and foreign commerce or from intrastate commerce is outmoded.

Most of the NCTC members have traffic within each of these categories, sometimes all moving on a single truck. To argue that three different standards should potentially apply to portions of one truckload of traffic demonstrates the failings of the present system and the dangers lurking for the future.

Any new legislation dealing with motor carrier transportation should preempt this issue on behalf of the federal government and establish a national, uniform standard. That, in conjunction with the other suggestions herein, would help modernize further the national transportation system.

This is especially important in light of the fact that there are now literally thousands of motor carriers that operate on a nationwide basis and that the shippers utilizing that service tend to have transportation needs between more points and throughout the continental United States (including Alaska). This is certainly true for the NCTC members who have manufacturing facilities, warehouses, pool distribution points, and customers literally everywhere.

Specific points which new legislation should incorporate include:

1. The Carmack Amendment (49 U.S.C. Section 10730 and Section 11707) should be retained.

2. All Federal regulations relating to loss and damage claims (49 C.F.R. 1005) and overcharge claims (49 C.F.R. 1008) should be retained and codified.

3. Federal regulations relating to mandatory cargo and public liability and property damage insurance for motor carriers and freight forwarders (49 C.F.R. 1043 and 1084) should be retained. The Secretary of the Department of Transportation should be authorized and directed to adjust the levels of required cargo insurance to a meaningful level.

4. Federal regulations governing the designation of statutory agents for the receipt of service of process (49 C.F.R. 1044) should be retained and codified.

5. The Department of Transportation should be required to maintain a central file, open to the public, on all insurance filings and the designated statutory agents.

6. Federal legislation must be enacted to encourage arbitration of cargo loss, damage and delay claims by which successful claimants will recover attorney fees when a carrier fails to offer an arbitration program which is low cost, independently administered, and which requires adherence to the law of carrier liability.

7. Access to Federal District Courts should be restored to litigate loss, damage and delay claims valued at less than the present $10,000 minimum amount.

8. Federal legislation should be enacted to restore the legal right of claimants' to institute litigation against a railroad in any jurisdiction in which that railroad is doing business.

9. Strict enforcement should be maintained of statutory and regulatory provisions governing common carrier public liability, property damage and cargo insurance, statutory agents, liability rules and related regulations vital to the protection of shippers, receivers and consumers.

10. Uniform and reasonable packaging specifications jointly prescribed by carriers with shipper input must be continued in the rail and motor carrier classifications, with existing anti-trust immunity.

11. The Carmack Amendment should be amended to cover all surface movements of exempt commodities and exempt transportation by rail and motor carriers, unless otherwise agreed to in a written bilateral contract between shipper and carrier.

Testimony

Submitted By The

NATIONAL DEMOCRATIC POLICY COMMITTEE

Ronald Kokinda
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Washington, D.C. 20006

Thank you Mr. Chairman for the opportunity to present a statement on trade policy.

A remedy for our current disasterous trade deficits will require certain bold policy changes, changes which may be precluded by current "consensus" politics, but could be achievable under true leadership.

The debt moratorium recently implemented by Brazil will call the question. Either we utilize the reforms outlined in "Operation Juarez" authored by Lyndon H. LaRouche, or shortly we will face a deepening and growing depression. We urge that the United States government cooperate with Brazil and other major debtor nations in implementing the steps elaborated in "Operation Juarez" which would rapidly reestablish growing U.S. export markets.

I wish to also call the committee's attention to another document relevant to overcoming the debt crisis issued by the Vatican's Pontifical Commission, "Justitia et Pax," entitled "At the Service of the Human Community: An Ethical Approach to the International Debt Question."

My statement includes: a statement and analysis of the current trade situation; two statements by Mr. Lyndon H. LaRouche, warning of the relationship between the threat of decoupling of our nation from our European allies and the trade crisis, and a statement on the Brazil action; excerpts from the Justitia et Pax document; and proposed legislation which defines the scope of measures which will be required to generate a real economic recovery.

I would like to quote from Mr. LaRouche's recent paper, "The 'New American Century' Doctrine: LaRouche's Challenge To Moscow," to properly situate the response we must make to the trade crisis:

> "Under emergency conditions, the President of the United States has the combination of legal powers and ready support from the Congress, sufficient to stop a collapse and reverse an economic depression very rapidly. This action is based on the fact that the physical capacity to produce wealth is real, whereas money is merely paper. If the government acts to freeze non-performing accounts of banking institutions, suspend foreclosures, and kindred measures, it is then feasible to steer large masses of new credit into investments in building infrastructure, reviving agriculture and manufacturing employment, and generating large volumes of exports of manufactured and agricultural goods. These measures are drastic by ordinary standards, but nothing short of such measures will do even the slightest good under such conditions. The thirty to fifty percent increase in average physical output of the U.S. economy, which could be accomplished over a four year term, would permit adequate defense and would enable us to turn over the temporarily frozen non-performing financial assets."

ANALYSIS OF THE TRADE CRISIS

The magnitude of the disaster implicit in the Administration's decision to institute trade-war measures, including competitive devaluation of the U.S. dollar, against our trading partners, may be properly guaged by comparison of the present economic crisis to conditions prevailing during the 1970's, as well as during the 1930's.

If the United States did not have to import net a fifth of its consumption, and if it did not have to borrow $150 billion a year from foreigners to do so, and if this $150 billion did not also finance the federal deficit, then Washington's decision Jan. 14 to hasten the crash of the dollar on overseas markets, might be excused as a mere act of colossal stupidity, on the scale of the worst Anglo-American blunders of the early 1930s.

As matters stand, it is much worse.

It might be said in defense of the disastrous 1929 Hawley-Smoot tariff, that its framers were fighting for a greater share of a world trade volume then still at relatively high levels. Secretary of State George Shultz, Trade Representative Clayton Yeutter, and their correspondent trade-warriors on the European side, have no such excuse. Their policies have already collapsed world trade, and their emulation of Hawley-Smoot merely uses the trade collapse for political provocation.

The scale of the present disaster may be summarized in the following comparison:

During the world economy's last period of growth, between 1973 and 1979, total world trade tripled, from $523 billion to $1.5 trillion. Higher oil prices accounted for only $70 billion of this growth; in contrast, the exports of industrial nations rose from $387 billion to $1,074 billion. In periods of growth, world trade grows much faster than economic growth as such, because the introduction of new technologies makes the world division of labor more complex.

That was during the 1970s, when the United States still produced 140 million tons of steel per year. Now, we produce fewer than 70 million tons of steel, and world trade is lower in absolute terms than it was in 1981.

In 1980, all the world's nations exported a grand total of $1.9 trillion in physical goods. By 1983, the volume had fallen to $1.67 trillion, or about 12% less than the 1980 total. At the height of the supposed "recovery," in 1985, world exports were only $1.72 trillion, still 10% lower than the 1980 level. During the 1975-80 period, world trade had grown by 5% a year.

The true position of world trade is even worse than the numbers show. To start with, American imports rose from a total of $256 billion in 1980, to $361 billion in 1985. These imports, bought at 40% to 70% below American producer prices, merely replaced production capacity we lost at home. In other words, the increase in U.S. imports reflects, not economic growth, but decay. Total world trade in 1985 minus the $104 billion increase in U.S. imports was only $1.663 trillion, lower than the supposed nadir of international trade in 1983, when exports fell to $1.667 trillion.

Discounting the bloating of America's import bill, the fall in international trade since 1980 amounts to 19%--not quite as bad as the worst of the 1930s, but grim by any historical standards.

In fact, American imports grew from a steady 14% of total world imports between 1977 and 1981, to 19% of the total in 1986, corresponding to the collapse of American industrial capacity. In absolute terms, American imports more than tripled between 1977 and 1986, from $120 billion per year, to $380 billion per year.

During the same period, the United States lost:

* Half of its steel production;
* More than half of its non-ferrous metals production;
* Half of all construction expenditures for economic infrastructure;
* Nine-tenths of its expenditures for utilities construction;
* A fifth of its automobile output;
* A fifth of housing construction;
* More than half of farm-equipment production;
* More than half of machine-tool capacity.

And so forth. What this country can no longer produce, it imports from abroad.

Not only has the volume of world trade declined; as in 1930s, prices in world trade have collapsed along with volume. The International Monetary Fund's comprehensive index for commodity prices, which sets the 1980 value at 100, stood at less than 70 as of October 1986. That is, commodity prices have dropped by more than 30% since 1980, comparable to the worst of the 1929-35 period.

The 1930s and the present

There are two principal objective differences between the present and the 1930s.

First, in 1919, the United States economy exported 16.4% of its goods output, and imported the equivalent of 8.3%. That is, our export capacity--prior to the ruinous 1921-23 Depression--was in excess of 8% of our total industrial output, and this at a time when industry still maintained high rates of capital formation, associated with the First World War. That is a good, rough measure of the U.S. economy's capacity to generate surplus product.

Today, we import net goods equivalent to a fifth of general consumption, and a quarter of consumption of capital goods in particular--and this while galloping disinvestment is tearing down our industrial, electrical, and transportation infrastructure. Despite the staggering import volume, we remain sharply in deficit with respect to basic infrastructural requirements. One example: In 1977, the United States spent $230 for every citizen in infrastructural construction (including industrial and utility plants); by 1985, that had fallen to half the previous level.

Our most pressing problem during the late 1920s and, of course, the 1930s, was that the overhang of debt stemming from war reparations prescribed by the Versailles Treaty, strangled our export markets. Exports fell from 16.4% of our goods output in 1919, to only 9.6% in 1929; and without such export markets, America's industry and agriculture could not sustain the rapid buildup of new plant capacity that had begun with, and followed, the First World War. Our problem now is the precise opposite: We are dependent on the rest of the world's output, so much so, in fact, that the road to recovery reminds the analyst of the Maine farmer's quip to the lost traveling salesman: "You can't get there from here." In other words, the United States cannot produce its way out of the present hole with its existing productive capacity, and its existing skilled labor force, in the absence of imported goods, particularly capital goods.

The second objective difference between now and the 1920s and 1930s regards the existence of the Soviet Union, the principal beneficiary of the trade and currency war between Europe and the United States. Since the 1982 imbroglio over the Soviets' gas pipeline to Western Europe, when Helmut Schmidt was still German chancellor, preparations have been underway among a European financier and political faction, to "decouple" Western Europe, economically and politically, from the United States. This faction, centered in the Venice-Zurich-Munich insurance cartel, finally has its opportunity, gratis of Washington's idiotic policy.

The end of the subsidy

American imports now amount to 20% of total domestic physical consumption, and 25% of new capital goods purchases. The financing of the subsidy depended upon two factors:

1) The enormous increase in the dollar's value between 1978 and 1984, when it rose from DM 1.80 at its low point to DM 3.30 at its peak. This permitted the United States to purchase foreign goods at 40% below the comparable cost of production.

2) The evolution of a captive "dollar bloc," comparable to the colonial "sterling bloc" of the 1930s, which then permitted Great Britain to purchase raw materials with a pound valued at artificially high levels with respect to the Empire, despite the pound's falling value against other industrial nations' currencies.

Of course, the dollar's fall to the neighborhood of DM 1.90 in the past several weeks underscores the difficulty of maintaining purchases from Japan and West Germany under present conditions. The enormous increase in the U.S. trade deficit, from about $150 billion in 1985 to an annual rate of $230 billion in November 1986, reflects not so much an increase of purchases, as the higher cost of these purchases.

However, as the Dallas Federal Reserve has pointed out, the dollar has fallen only by 6.4% against the average of its trading partners' currencies, and the weighted average of the fall is less than 10%--compared to the 40% declines against the German mark and the Japanese yen. That is because the "dollar bloc," including Taiwan, South Korea, Brazil, and other important developing-sector trading partners of the United States, has kept its currencies falling with the dollar.

That has led to some remarkable financial distortions, including the accumulation by Taiwan of $25 billion of U.S. Treasury securities since January 1986. That reflects speculative purchases of the Taiwan dollar, which has lost so much value against the Japanese yen that it will soon have to leave the "dollar bloc."

In Ibero-America, exporters have had to accept prices for their manufactured goods at 70% below comparable U.S. cost of production, at the expense of 10% to 20% reductions in living standards each year, according to a study performed by EIR for spring 1986 [cf2]Quarterly Economic Report.[cf1] This decline was measured between 1981 and 1983, based on comparison of price and unit data for a group of 35 major commodities. Surprisingly, exports of raw materials from Ibero-America to the United States declined, while exports of manufactured products rose spectacularly. International Monetary Fund programs forced devaluations of those nations' currencies against the dollar, producing declines in the export prices of their manufactured goods even larger than the fall in the prices for their commodities listed on international exchanges.

The problem is that the dollar-bloc countries do not have sufficient economic weight to provide the United States with the size of subsidy it requires.

There is a miserable fraud involved in Yeutter's attacks on Western Europe. Yeutter's strike at selected European food exports was calculated to hit every European Community (EC) country, to score maximum political damage. The list was apparently drawn up to damage important export categories in every European country, without benefit to American producers.

These measures are irrelevant to the U.S. trade problem. The deeper problem is that the collapsing American dollar, and the $200 billion overhang of U.S. net foreign indebtedness, have shut off the means to finance the trade subsidy. The United States will begin to live on what it produces, that is, undergo the worst contraction of consumption in its history.

The dollar now stands close to DM 1.80, or barely more than half its January 1985 peak of DM 3.47; and there is no reason to believe that it will not fall to the range of DM 1.50 or lower during the next couple of months. That constitutes a "doomsday scenario" for the so-called economic recovery touted by the administration. By maintaining the growth of consumer credit at over 15% per annum, and importing the goods corresponding to the credit expansion, the U.S. economy has maintained at least the semblance of functioning, despite the utter ruin of steel, nonferrous metals, agriculture, mining, machine tools, and heavy construction, as well as the sharp deterioration of auto, electronics, and homebuilding.

The dollar crash has now eliminated both America's capacity to afford such imports, as well as its capacity to persuade foreigners to continue to finance these imports. November's trade deficit, at an annualized rate of $230 billion, triggered the situation in a sense; it represented the turning point, at which much more of the collapsing U.S. currency would have to be paid out, for a smaller physical volume of imports.

In the meantime, the dollar's uneven collapse against different European currencies has produced monetary chaos and political tensions in Western Europe, whose apparent cure seems to be to break with the dollar altogether. After 10 hours of negotiations the weekend of Jan. 10-11, the European Community finance ministers revalued the German mark by 3%, the Belgian and Luxembourg francs by 2%, and left other currencies unchanged. West Germany agreed to the revaluation, to the detriment of its export industries, and two weeks before national elections, after its central bank spent billions of dollars supporting other European currencies.

But the prospects for European currency stability following the realignment are no better, as the London Financial Times wrote Jan. 13: "The key question is whether this week's small DM revaluation will do more than buy a little time.... The European Monetary System has been under pressure since early 1985 (as it was before 1983) largely because of the dollar's weakness. When investors become disillusioned with the dollar, capital tends to flow disproportionately into the DM because other EMS units play little role as investment and reserve currencies."

As the dollar continues to fall, i.e., as dollar-holders seek refuge in the German mark and, to a much lesser extent, other European currencies, monetary chaos in Europe will be uncontrollable. Talk of exchange controls, which emerged when capital was flowing into the dollar during 1981-83, will be revived with a vengeance, to keep money out. European export industries, meanwhile, will be unable to sell to the United States, because American buyers will either be unable to afford, or not allowed, to buy their products, or both.

In the very short run, the United States, the world's largest net debtor, is in danger of a mass exodus of foreign capital, leading to a drastic rise in interest rates, and a collapse of all securities markets (not to mention real estate). That is why Federal Reserve chairman Paul Volcker, who has long warned of the potential for such a disaster, is reportedly aghast at the Treasury's handling of the current mess. However, since he helped create the series of disasters that led to this juncture, and it does him little good to repent at the extreme consequences of his own policy.

PROPOSED LEGISLATION TO THE FEDERAL GOVERNMENT ON EMERGENCY ECONOMIC MEASURES:

WHEREAS, the collapse of the industrial and agricultural capabilities of this country pose a national security threat from the standpoint of defense, public health, and general well-being;

WHEREAS, the everyday destruction of rural and urban life, the increase of poverty, the closing of farms and manufacturing, and the collapse of our education system easily demonstrates the absurdity of those who claim that the nation is undergoing an economic recovery;

WHEREAS, since 1979 when Paul Volcker became Federal Reserve Board Chairman, the United States has lost half of its steel production, more than half of its non-ferrous metals production, half of all construction expenditures for economic infrastructure, nine tenths of its expenditures for utilities construction, a fifth of its automobile output, a fifth of housing construction, more than half of its machine tool capacity, more than half of farm equipment production, and more than 500,000 farms;

WHEREAS, last year the United States, a country that once had the greatest balance of trade surplus in the world, registered a balance of trade deficit topping $170 billion, the greatest trade deficit of any country ever;

WHEREAS, 138 banks, a post-depression record, failed in the U.S. during 1986 and almost ten percent of the FDIC-insured banks are on its troubled list;

WHEREAS, surveys of homeless show 60,000 homeless for New York, 50,000 for Los Angeles and similar depression statistics of homeless throughout urban and rural America;

WHEREAS, such depression connected diseases as tuberculosis and AIDS have become major public health hazards, threatening national catastrophe, if not solved;

WHEREAS, the hardship, social and economic dislocation, and dangers to our national security and the security of the Western Alliance are the greatest yet in the Post World War Two period;

THEREFORE, be it resolved that for the well-being of this nation the following emergency banking measures go into effect:

1. The President must declare a national economic and strategic emergency.
2.0 The President must enact emergency measures of reform of currency and banking.

2.1 Under his emergency powers, according to statute and the Constitution, he must 'nationalize' the Federal Resrve System. He must suspend the Federal Reserve System's powers to:
    a. Issue its own currency, or to exercise any discretion over policies pertaining to the issue of currency;
    b. Set interest rates at its own discretion;
    c. Set banking reserve-ratios at its own discretion;
    d. Operate a 'Keynesian multiplier' in the banking system.

2.2 Excepting Federal Reserve Notes remaining in circulation from old issues, the only lawful issue of currency shall be U.S. Treasury Currency Notes. These notes shall be issued as an Act of Congress, according to Article 1 of the U.S. Constitution.

These notes shall not be issued in payment of government operating expenditures, but shall be issued only for lending to approved categories of borrowers, through the national banking-system, on terms, and at interest-rates determined by the President according to the powers as shall be assigned to him for this purpose by Act of Congress. We recommend the interest rates be set at 2 to 4 percent.

THE LENDING OF THESE ISSUES SHALL BE RESTRICTED TO:

a) Purchase of machinery, tools, equipment for research of production of goods in industry, agriculture, and development and maintenance of basic economic infrastructure;

b) Purchase of materials, semi-finished goods, and labor for production and maintenance of goods-production of industry and agriculture, and of basic economic infrastructure;

c) Loans to the Federal government for National defense or for the purposes of governmental capital imporvements of basic economic infrastructure of Federal, State, and Local government agencies;

d) For approved export-credit, of U.S. exporters of capital goods, agricultural goods, and engineering services.

The new issue of U.S. Treasury Currency Notes, shall have a gold-reserve value, under agreements of reciprocity negotiated with other governments entering into a gold reserve system with the United States. We propose that gold be valued at approximately $750 per ounce.

2.3 The United States must institute foreign-exchange controls for the duration of the emergency. Opponents of the emergency action, will otherwise collaborate with foreign interests, to organize attempted 'runs agianst the dollar.'

2.4 Emergency action must be taken to halt the collapse of banks. We cannot permit banks to cease functioning because they have a vital public and national-security interest and are an indispensable institution of our national economy. Two interests must be protected. First, depositors must be protected at 100% parity. Second the bank's continuation of customary banking services, to those aspects of the community which are defined as having high national priority, must be assured.

3.0 The United States must disassociate itself from, and oppose so-called 'IMF conditionalities' and kindred policies and measures by supranational agencies. Support of IMF 'conditionalities' and kindred measures drives the desperate populations of affected nations into a state of insurrection against the governments that support conditionalites or it drives allies of the United States into Soviet spheres of influence. The most efficient means of nullifying IMF 'conditionalities' is to enact monetary and economic reforms of the domestic life and foreign trade of the United States and to establish Treaty-agreements with governments of other nations, establishing the kernel of a new international monetary system which is consistant with the principles of international law upon which the United States was founded.

FURTHERMORE, BE IT RESOLVED that government directed investment in economic infrastructure has always proven to be the most efficient means of rapid economic development. And the U.S. transportation grid, fresh water management, and the urban infrastructure of its cites were once the foundation of the U.S. economic miracle. The collapse of these areas now threatens the United States as an economic superpower. Therefore, the following sampling of crucial concrete policy actions that must be taken to fill the gap of a more than $3 trillion national infrastructure deficit relative to 1970 that this nation has built up defines the correct direction for economic revitilization: The aforementioned banking measures will facilitate these efforts.

1. Immediate and large flows of gold-reserve credit to Public utilities and capital programs of government for infrastructure development.
2. Long-term construction loans, at 2% prime interest rate, must be supplied to the Federal and state governments, for work on the development of a national fresh-water management grid, including the NAWAPA project, with priority on construction in areas most affected by drought and the lowering of water-tables.
3. Long-term credit, at 2% prime interest rate, must be made available to public utilities, for creating not less than 5 trillion kilowatt hours of generating capacity during a period of not less than fifteen years ahead.
4. Long-term credit for construction of a renovated freight and passenger rail system among principle population centers.
5. The U.S. Corps of Engineers must be expanded, both for its essential role in developing the fresh-water management grid, and its related role in rebuilding and extending the nation's system of inland waterways and ports. In addition to accelerated dredging of waterways and repair of locks, immediate priorities must focus upon the Ohio and Mississippi river systems, on the completion of the Tennessee-Tombigbee system, and the completion of a barge canal linking Lake Erie to the waterways in the Pittsburg region. Furthermore the I-Conn-Erie project to modernize the Erie Canal must be initiated.
6. We need long term credit to create a U.S.-flag maritime fleet of high speed cargo vessels, most probably in the 50,000-100,000 ton class. This fleet shall be part of the military reserve.
7. To refurbish the essential ocean-vessel ports of the United States, and incorporated construction and repair facilities.
8. To provide gold-reserve credit to states and local government for urgent repairs of essential infrastructure.
9. To reinvigorate the system of veteran's hospitals by aid of making such institutions national centers of clinical care and laboratory research facilities in treatment of diseases of aging of tissues, such as cancer. To provide loans for capital improvements and expansion of plant and equipment for this purpose.

10. To provide low cost, long term credit to those industries which must expand and/or retool their production capacities, that they might fulfill their functions as vendors to both national defense and the principle infrastructure development programs making use of loans of gold reserve credit.
11. To establish several experimental stations whose activities are inclusively devoted to development of improved methods and procedures of desalination of salt water.

BRAZIL ACTION BRINGS DOWN IMF

by Lyndon H. LaRouche, Jr.

WIESBADEN, 22 Feb (EIR) -- Last Friday evening the government of Brazil declared a general moratorium on payment of interest on the nation's foreign debt. President Jose Sarney acted with full support of the government and armed services of his nation, in stating that Brazil was seeking to negotiate its debt repayment, but that Brazil will not submit to terms which either lowered the living standard of Brazil's population, or inhibited Brazil's economic development.

President Sarney emphasized that Brazil's action of this past Friday had been prepared over several years. Brazil had negotiated with the IMF in the past, he said, because Brazil was not yet in a position of strength to refuse to do so. A process of building up of reserves over years, had now put Brazil into a strong position for challenging the IMF's power, the President explained Friday's action.

Although Brazil's foreign debt represents only an approximate 1% of the western world's relevant debt structure, Brazil's direct challenge to the IMF and the backers of Kissinger Associates, Inc., is sufficient to set off a chain-reaction bringing down the financial institutions of North America and western Europe. The first ripples of Brazil's action will affect Switzerland and West Germany less than the U.S., but even the Swiss banking system could not resist the tidal wave building up from a collapse of the U.S. financial institutions. The collapse, if it occurred, would be several times the magnitude of the 1931-1932 collapse of international banking.

A new international financial collapse will occur, only if the United States and european governments attempt to enforce the continuation of existing IMF and G-5 policies in some slightly altered disguise. The U.S. President has the emergency powers needed, to reorganize the U.S. currency and banking, in such a way as to enable the U.S. both to absorb the shock of non-
performance of even the total amount of Third World foreign debt, and also to launch a revival of foreign-trade credits fr hard-commodity exports into Central and South America.

It would be insane for the U.S. Government to buy up the non-performing foreign-debt assets of the principal U.S. banks. Such an action would collapse the U.S. dollar, and bring on the worst world-wide economic depression in history. However, the U.S. government does have lawful recourse to fixing the par value of the principal amounts of temporarily non-performing foreign-debt assets of U.S. banks. This action, combined with the restructuring of those foreign debts at very low interest rates, and extended payments schedules, would stop the threatened financial chain-reaction.

This issue came to the surface during the 1982 debt-crisis. I proposed a comprehensive solution elaborated in the "Operation Juarez" issued on August 5, 1982. The U.S. government considered but rejected my proposals, and chose instead the proposals of the then just-formed consulting firm, Kissinger Associates, Inc. The case-by-case policies adopted on the recommendation of Kissinger Associates and U.S. Treasury Secretary Donald T. Regan, have been demolished by last Friday's developments.

Powerful interests inside the U.S. will now move to press for immediate action along the lines of the proposals elaborated in "Operation Juarez." Some supporting "Operation Juarez" now, will do so because they are sympathetic to the perspective offered. Others will support "Operation Juarez," even though they hate its philosophy, for the reason that they see no other alternative to general international financial collapse available under present circumstances.

Whatever choice is made, either "Operation Juarez"-guided emergency measures of monetary reform, or to allow the general financial collapse to proceed, the world has come to the end of a twenty-year trend in monetary and economic policies. The IMF-centered "floating exchange-rate system" is dead. Only a new system, featuring gold-reserve-denominated hard, fixed parities of currencies, can prevent a rapid breakdown of western civilization as a whole.

If "Operation Juarez" alternatives are adopted, this will mean early currency reforms in many nations, needed to bring the currency into the state required for assignment of fixed, gold-reserve parity values in world markets. Parity values must be defended by rigorous measures of currency-exchange controls among all nations, measures to which the european ECU system could readily adapt itself. The defense of the new system will require assurance of forward abilities to pay, assurances which can be obtained only by promoting high rates of expansion of employment and productivities in production of physical goods and in scientific and engineering services essential to development of improved industrial technologies. In other words, the malthusian dogmas of "post-industrial utopia" must be scrapped immediately; the western world must resume a policy of technological proogress in production of physical goods, in a capital-intensive, energy-intensive mode.

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Justitia et Pax: 'At the service of the Human Community: An Ethical Approach to the International Debt Question," was published by the Pontifical Commission Justitia et Pax of the Vatican on Jan. 29. The document is now playing a central role in the movement for Ibero-American debt restructuring and economic integration. The following is an abridged version, with notes omitted.

Presentation

The phenomenon of international indebtedness has sharply increased in the last few years, presenting new challenges to the international community....

In the last three or four years, the accumulation of payments due has reached such a level that many countries are no longer in a position to honor their agreements, and find themselves forced to seek further loans, thus getting caught in a web, escape from which has become very difficult to predict.

Debtor countries, in fact, find themselves caught in a vicious circle. In order to pay back their debts, they are obliged to transfer ever greater amounts of money outside of the country. These are resources which should have been available for internal purposes and investment and therefore for their own development.

The phenomenon of indebtedness brings to the fore the growing interdependence of economies whose mechanisms--capital flows and commercial exchanges--have become subject to new constraints. Thus external factors heavily condition the evolution of the debt of developing countries. In particular, floating and unstable exchange rates, the variations in interest rates and the temptation of industrialized countries have created an increasingly unfavorable environment for debtor countries that thus become still more vulnerable.

When credit agencies consider the situation solely from the economic and monetary angle, they often impose on the debtor countries terms, in exchange for accrued credit, that can contribute, at least in the short term, to unemployment, recession, and a drastic reduction in the standard of living. This causes suffering, first of all for the poorest as well as for certain sectors of the middle class. In brief, it is a situation that is intolerable, and, in the medium term, disastrous for the creditors themselves. Debt servicing cannot be met at the price of the asphyxiation of a country's economy, and no government can morally demand of its people privations incompatible with human dignity.

Faced with demands that are often contradictory, the countries in question have not hesitated to react. Initiatives on both regional and international levels have multiplied. Some have advocated radical unilateral solutions. But the majority have taken into account the globality of the problem and its profound implications, not only on the economic and financial level, but also in its social and human dimensions which place before the responsible parties ethical choices.

It is to this ethical aspect of the problem that John Paul II has frequently called the attention of international leaders, particularly in his Message to the 40th General Assembly of the United Nations, October 14, 1985.

Conscious of her mission to shed the light of the Gospel on situations involving the responsibilities of men and women, the Church once again invites all the parties involved to examine the ethical implications of the question of the external debt of developing countries, in order to arrive at just solutions that respect the dignity of those who would be most strongly affected by its consequences.

For this reason, the Holy Father asked the Pontifical Commission "Justitia et Pax" to deepen the reflection on the problem and to propose to the different parties involved--creditor and debtor countries, financial agencies and commercial banks--some criteria for weighing the situation, and a method of analysis for "an ethical approach to the international debt question.;

The Pontifical Commission "Justitia et Pax" expresses its fervent hope that this document might contribute to a clarification of the choices to be made by those who exercise responsibility in this area, one which today has become a privileged place for international solidarity.

The Commission also nourishes the hope that these reflections will give renewed confidence to those persons and nations most severely tested, by once again strongly repeating that economic structures and financial mechanisms are at the service of the human person and not vice versa, and that relationships of exchange and the mechanisms of finance which go with them can be reformed before shortsightedness and egoisms--be they private or collective--degenerate into irremediable conflicts.

Pontifical Commission, Justitia et Pax,
Roger Cardinal Etchegaray, President
Jorge Mejia, Vice-President
Pontifical Commission, Justitia et Pax

Introduction

Political officials and economists, social and religious leaders, as well as public opinion throughout the world, recognize that the debt levels of the developing countries constitute a serious, urgent, and complex problem due to their social, economic and political repercussions. The development of the debtor countries and, at times, their very independence are endangered. The living conditions in the poorest countries have become worse, and the international financial system is going through a series of unsettling shocks.

Creditors and debtors have tried to come up with immediate--and at times even more long-term--solutions on a case-by-case basis. Albeit insufficient and limited, these efforts need to be pursued in a spirit of dialogue and mutual understanding, in order to see more clearly the rights and responsibilities of each party.

At the same time that current economic conditions have affected the situation of developing countries to the point that some of them, especially in Latin America and Africa, are at the breaking point because of their inability to meet their debt servicing obligations, the international financial and monetary structures are also being challenged. How did this happen? What changes in behavior patterns and in institutions will make it possible to establish equitable relations between creditors and debtors and keep the crisis from continuing and becoming even more dangerous?

The Church shares these concerns, which are international, regional, and national in nature, and wishes to reiterate and specify the principles of justice and solidarity which will help in seeking solutions. The Church speaks first and foremost to the principal agents in the financial and monetary worlds. In so doing, she hopes to enlighten the moral conscience of the decision-makers whose choices cannot disregard ethical principles, but she does so without proposing action programs which would be outside her field of competence.

The Church speaks to all peoples, especially those most in need, who are the first to suffer the repercussions of these disorders and do so with feelings of fatalism, defeat, latent injustice, and sometimes revolt. The Church wishes to rekindle within them hope and confidence in the possibility of resolving the debt crisis with the participation of all parties and in full respect for each party.

The best way to tackle these serious issues would seem to be in a global perspective which would be at the same time an ethical approach. For this reason, it would seem necessary to highlight the ethical principles applicable to these complex situations.

The present text has made use of many studies on the international debt that have already appeared. Ethical in nature, this global perspective allows all the responsible parties, be they persons or institutions, on both a national and international level, to carry out a reflection, adapted to the situations that are within their competence. To all those who will heed its words, the Church expresses, from the very outset, its firm conviction that cooperation which goes beyond collective egoism and vested interests can provide for an efficient management of the debt crisis and, more generally, can mark progress along the path of international economic justice.

I. Ethical principles

1. Create new forms of solidarity

The debt of the developing countries must be placed in a broader context of economic, political, and technological relations which point to the increased interdependence between countries, as well as to the need for international collaboration in pursuing the objectives of the common good. In order to be just, this interdependence should give rise to new and broader expressions of solidarity which respect the equal dignity of all peoples, rather than lead to domination by the strongest, to national egoism, to inequalities and injustices. The monetary and financial issue therefore commands attention today in an urgent and new way.

2. Accept co-responsibility

Solidarity implies an awareness and acceptance of co-responsibility for the causes and the solutions relative to international debt. The causes are both internal and external. While they are specific to each country and to each political and economic system, these causes also stem from evolutions in the international environment which depend to a great extent on the actions and decisions of the developed countries.... Co-responsibility concerns the future of countries and of entire populations, but also the possibilities of international peace based on justice.

3. Establish relations of trust

Co-responsibility will help to create or restore relations based on trust between nations (creditors and debtors) and between the various agents (political authorities, commercial banks, international organizations) for cooperation in the search for solutions. Mutual trust is an indispensable value which must be constantly renewed. It nourishes belief in another person's good faith, even when difficulties prevent that person from respecting his commitments, and makes it possible to continue treating him as a partner.

4. Know how to share efforts and sacrifices

In order to emerge from the international debt crisis, the various partners must agree on an equitable sharing of the adjustment efforts and the necessary sacrifices, taking into account the priority to be given to the needs of the most deprived peoples. It is the responsibility of the countries that are better off to assume a larger share.

5. Foster the participation of all

Financial and monetary officials have the prime responsibility for finding solutions to the debt crisis, but they share this responsibility with political and economic leaders.... In these new ethical domains, the Church is called upon to specify the requirements of social justice and solidarity with respect to the situations of individual countries, seen within an international context.

6. Identify emergency and long-term measures

The urgent nature of the situation in some countries calls for immediate solutions in the context of an ethics of survival. The main effort will have to be brought to bear on economic and social rehabilitation: recovery of growth rates, productive investments, resource creation, equitable sharing.... In order to avoid a return to crisis situations with overly abrupt changes in the international environment, a reform of the financial and monetary institutions also needs to be studied and fostered.

II. Action in emergency situations

In the case of some developing countries, the total amount of the debts contracted, and especially the interest and principal payments due each year, are so high in relation to available financial resources that meeting these obligations would cause severe damage to their economies and the standard of living of their populations, particularly the poorest classes. In addition, this critical situation is worsened by external circumstances which tend to lower their export revenues or make their debts all the more difficult to service. Unable to meet their commitments to their various creditors, some of these countries are on the very brink of bankruptcy. International solidarity calls for emergency measures to ensure the survival of these countries.

The first thing to do is to foster dialogue and cooperation on the part of all for immediate help. It is also necessary to avoid payment defaults which could destabilize the international financial system, with the attendant risks of a generalized crisis. Therefore, an ethics of survival should guide attitudes and decisions: avoid breaches between creditors and debtors as well as any unilateral termination of prior commitments; respect the insolvent debtor and do not burden him with immediate and intolerable demands which he cannot meet. Even if such demands are legal, they can become an abuse. With the Gospel as the source of inspiration, other types of action could also be contemplated such as granting extensions, partial or even total remission of debts, or helping the debtor to regain solvency.

One way to contribute to healthier international economic relations and to foster agreement about emergency measures to be adopted would be to foresee, prevent, and attenuate such crises which are unfairly advantageous to some, excessively injurious to others, and often lead to unjust speculation. Coordinating structures need to be set up as quickly as possible....

Because of their mandate, certain international organizations bear a special responsibility. For example, the International Monetary Fund (IMF) is responsible for helping member states to redress deficits in their balance of payments and to resolve their monetary difficulties. To this end, the IMF has at its disposal the necessary financial resources. Its role, as well as its methods of intervention, have developed considerably over the last few years. In numerous cases, however, the IMF's decisions have been ill-received by the leaders and the general public of countries in difficulty; the decisions in question may seem to have been imposed in an authoritarian and technocratic way without due consideration for urgent social requirements and the specific features of each situation. It would be advisable to bring out clearly that dialogue and the service of all concerned are values which guide the actions taken by the IMF.

The various creditors--states and banks--also bear very concrete responsibility in the area of emergency. Coordination is necessary if this responsibility is to be carried out justly and efficaciously, with an equitable sharing of immediate duties both in regard to the country in difficulty and to the IMF.

... Special care needs to be taken to identify, among the various causes of a country's debt situation, those that are attributable to global mechanisms which seem beyond control; for example, the fluctuations of currency used for international contracts, shifts in the prices of raw materials which are often the object of speculation on the major stock markets, or the sharp drop in oil prices.

Helping whoever is in dire need is indispensable but it is not enough. That type of assistance would even be illusory if at the same time the foundations were not laid for economic and financial recovery in the future. Most often the crisis does not depend on a simple accidental convergence of factors, but rather on deeper causes which a crisis brings to the surface. Emergency arrangements must be linked to medium and long-term adjustment measures.

III. Joint assumption of[ql]responsibility for the future

The multilateral financial organizations will fulfill their role if their decisions and actions are taken in a spirit of justice and solidarity at the service of all.

The peoples themselves have the prime responsibility to work for their own development. But they will not bring this about in isolation.

In order to handle these new tasks, some reorganization is most assuredly necessary: the adaptation and expansion of their interventions, increased means for actions, effective participation of all members in decision-making, contribution to development targets, and priority for the needs of the poorest populations. As early as 1967, Pope Paul VI had expressed hope for this reorganization with a view to "the development of peoples.:

Confidence, which is a necessary element in generating a national consensus in accepting a fair distribution of sacrifices, and thereby assuring the successful outcome of adjustment measures, is not the result of economic measures alone. It is only granted if impartiality and the service of others emerge as the motives behind decisions, as opposed to the interest of one nation or social category. It is up to the member states, especially the ones with preponderant influence in the decision-making process because of their economic power and level of contributions, to support these organizations in an active way, to specify their tasks, to expand their endeavors, and to turn these sites of power into centers of dialogue and cooperation for the international common good. Each of the multilateral financial organizations--International Monetary Fund (IMF), the World Bank, regional banks--has specific functions, and hence responsibilities in its own right. In order to highlight their inherent character of solidarity and concordance, these bodies will have to acknowledge the need to increase representation of developing countries and their participation in the major international economic decisions that affect them. It will be the concern of these agencies to coordinate their efforts and policies to respond in a specific and coherent way to the most urgent debt needs with an eye to the future. They will also have to consult with the other international financial agents in order to determine, in dialogue with the debtor countries, the measures to be adopted and the distribution of responsibilities, according to each party's functions and possibilities.

Without going into those details which fall within "the vocation of lay people acting on their own initiative with their fellow countrymen," the Church draws the attention of multilateral financial organizations and those who work in them to a few points for consideration:

--to examine the loan "conditions" set by the IMF openly in a way which is adapted to each developing country; to integrate the human factor in the "increased surveillance" over the implementation of adjustment measures and the results achieved;

--to encourage new capital, public and private, to finance priority projects for developing countries;

--to foster dialogue between creditors and debtors for a rescheduling of debts and a reduction of the sums due in one or even more years if possible;

--to foresee special provisions to cover financial difficulties due to natural catastrophes, excessive variations in the prices of indispensable raw materials, and abrupt fluctuations in exchange rates. Because of their unexpectedness, their extent, and financial repercussions, these uncontrolled phenomena disrupt the economic programs of the developing countries in particular;

--to prompt a better coordination of the economic and monetary policies of the industrialized countries, encouraging those with the most favorable impact on the developing countries;

--to look into new problems, current and future, in order to envisage solutions now which take into account the widely diversified evolution potential of national economies and the future prospects of each country....

--to pay close attention to the selection and training of all those who work in multilateral organizations and who take part in situation analysis.... There is always the danger of remaining on the level of theoretical, technical, or bureaucratic solutions, while at stake are human lives, the development of peoples, and solidarity among nations....

Final proposal

In order to deal with the serious challenge of the indebtedness of the developing countries, the Church calls upon all people of good will to broaden their conscience to include these new, urgent, and complex international responsibilities, and to mobilize the full range of their possibilities for action in order to identify and implement solutions of solidarity.

Has the time not come for the industrialized countries to draw up a broad plan of cooperation and assistance for the good of the developing countries?

Without drawing a parallel with what was done after World War II to accelerate the reconstruction and economic recovery of countries seriously damaged during that conflict, is it not imperative to start working on a new system of aid from the industrialized countries to the less prosperous ones, in the interests of all, especially because it would mean restoring hope to suffering populations? Such a contribution, which would constitute a commitment of several years, would seem indispensable in order to enable the developing countries to launch and conclude successfully, in cooperation with the industrialized countries and the international organizations, the long-term programs they need to undertake as soon as possible. May our appeal be heeded before it is too late!

END

—[ATTACHMENT]—

The
LaRouche Democratic
Campaign

P.O. Box 17068, Washington, D.C. 20041

Treasonous Trilaterals Organize Trade War With U.S. European Allies

Jan. 8—The respective U.S. and European branches of the Trilateral Commission, centered around attorney Lloyd Cutler, have brought the United States and its European allies to within weeks of the outbreak of war—trade war. The principal figures among the agents-provocateurs who have organized this political conflict, on both sides of the Atlantic, are members of the Trilateral Commission. Apart from Moscow itself, the principal beneficiary of such a trade war, is the Soviet empire. The financial interest which stands to gain the greatest financial profit from such a trade war, is a consortium of international food cartels, including the Minnesota-based Cargill grain monopoly interests of the United States strongly represented in the U.S. Department of Agriculture's officialdom since the early 1960s, and under Secretary Richard Lyng today.

The details of the current roles of the Trilateral Commission and Cargill interests are matters adequately documented in currently breaking news dispatches on both sides of the Atlantic. I wish to draw attention to two outstanding aspects of Cargill's background-role in this connection, and then to concentrate the remainder of my remarks on the strategic lunacy of the present eruption of trade-war itself.

For about 20 years, the policies of the Cargill-steered U.S. Department of Agriculture have been moving the United States toward two very ugly end-results. Since the first butter give-away to Moscow, under the Nixon administration, run under the cover of a U.S. subsidy to New Zealand dairy-export monopolies, U.S., Canadian, and Western European nations have been subsidizing the Soviet arms build-up with a massive flow of food subsidies. The image of the Soviet Red Army, sliding into Afghanistan on a sea of U.S.-subsidized butter, is, symbolically, an accurate one. Meanwhile, the complex of Minnesota financial interests politically intertwined with Cargill, have been leaders, both in conduiting U.S. technology to Moscow, and conduiting Soviet peace propaganda into the United States.

At the same time, the same combination of Cargill-centered food monopolies and the U.S. Department of Agriculture, have been developing the preconditions for a political dictatorship inside the United States: a dictatorship based upon "food control."

If we estimate the food-consumption requirements of the U.S. population in terms of a standard market-basket of good nutrition, a growing food-production shortage is developing inside the United States, and a more savage food shortage already exists world-wide. Yet, we are cutting back the food production of North America, Argentina, and Western Europe, the only regions within a starving world organized to produce a surplus for large volumes of export. More and more, control of dwindling food supplies, is falling into the hands of a handful of firms, representing a Switzerland-based international foodstuffs cartel. More and more U.S. households rely less and less on the family kitchen, and more and more on "fast food" operations. The independent farmer is being wiped out of existence, as production of food is concentrated under the direct control of the international cartel and vast chains under the control of that cartel's monopoly.

Compare wartime food rationing, the food stamp program, and the methods by which food control has been used by the Soviets in Eastern Europe, with the conditions of controlled food shortages toward which the United States and Western Europe are being pushed today. We are not far from the potential circumstances under which politically-sensitive food rationing could be introduced in North America and Western Europe. Those among us who have observed the way in which the world drifts these past decades, sometimes speak of "Murphy's Law": whatever nonsense could potentially occur, usually does occur. Since there are those in the U.S. intelligence community who have been talking of a drift toward politically-shaped food control for more than a dozen years so far, the likelihood that the conditions for food control will lead to food-control programs, is to be taken seriously.

The time might come, when the words which come out of your mouth, and the way your locality votes in elections, determine whether food goes in.

Apart from the potential for future would-be dictators of the United States, the increase in food shortages is an immense source of super-profits for Cargill and other members of that wicked cartel. Since Cargill virtually runs the policies of the U.S. Department of Agriculture, and has for more than 20 years, the present drift of U.S. agriculture policy should not surprise anyone. Nor should we be surprised by the fact that foodstuffs are the leading issue of the trade war which the Trilaterals are now organizing on both sides of the Atlantic.

True, something must be done about the skyrocketing U.S. balance of trade deficit. A 200% tariff on European wines and cheeses is not going to help that trade deficit one bit. The Europeans will simply impose matching tariff walls against U.S. exports, at a time when those countries' markets for U.S. goods are being depressed rapidly in any case. Boycotting West German machine-tools isn't going to help one bit, since the United States no longer produces a significant amount of machine tools: the Nixon, Carter, and Reagan administrations have already succeeded in shutting down U.S. machine-tool production.

House Speaker Jim Wright is approximately correct, in reporting that during the past four years, the United States has been transformed from the world's largest creditor, to the world's biggest debtor—and, he might have added, the world's worst credit-risk among major nations. He should have added, that "four years ago" is the time that Treasury Secretary Donald T. Regan and Kissinger Associates, Inc. acted to shut down the import-markets of Central and South America. He should have added, that the reason the Reagan administration took such actions causing the spiralling of U.S. trade-deficits, was that President Reagan decided, during the spring of 1981, to continue the Federal Reserve policies which President Jimmy Carter and Paul Volcker had launched during October 1979.

Up to 1982, what we call the developing sector was the market on which North America, Japan, and Western Europe depended for the net margin of export-balances of the industrialized nations as a whole. Those markets began to shrink under the new international monetary rules adopted at the 1972 Azores and 1975 Rambouillet monetary conferences. The 1979 actions of the Carter administration plunged the developing sector into an insoluble and worsening debt crisis, which exploded as the 1982 "debt bomb." The Reagan administration responded to the 1982 crisis in the worst possible way, ordering debt-ridden nations to slash their imports from Europe and the United States, and forcing those nations to increase their exports into the United States.

At the same time, over the past 10 years, especially, the U.S. industrial and agricultural sectors have been gutted into a state of accelerating collapse by U.S. government policies aimed at helping us to become a "services"-oriented "post-industrial society." The idea was, that we should shut down chunk after chunk of our industry, and fill our market-baskets with low-priced imports of food and manufactures, instead.

Then, in 1983, came the "economic recovery" which never happened. True, the rate of collapse during 1983 and 1984 was much slower than during the summer and fall of 1982. During the second half of 1982, the rate of collapse touched a 12% rate, and rebounded to a rate of collapse of nearly 5% during 1983 and 1984. Then, during 1986, we collapsed the physical-goods producing sector of our economy about 15%, much worse than 1982: but the President wishfully insists that this is a "wonderful economic recovery," even after the voters massively rejected his "recovery" in the November 1986 elections.

The Reagan administration is reacting as the Hoover administration reacted to the crises of 1929 and 1931. The administration has been drifting, over the past six months, toward a repetition of the same sort of trade-war policies which set off the Great Depression of the 1930s, the infamous Smoot-Hawley tariff legislation. That is precisely what the trade war with Europe represents, a revival of the lunacy of Smoot-Hawley.

There is no solution, unless we face the cruel fact that the U.S. economy has been in a roller-coaster series of ups and downs, mostly down, over the entire period of the Reagan administration so far. Once Washington faces that fact, the solution is in sight. What we need, what Western Europe needs, and what our developing-sector markets need, is a genuine, old-fashioned sort of general economic recovery.

True the GNP figures insist that a recovery has been in progress, although every major branch of the physical economy, basic economic infrastructure, national defense procurement, agriculture, manufacturing, and energy production, has been collapsing over the past 10 years. The GNP figures are partly faked, for political reasons, as most administrations of the past 20 years have faked their GNP and inflation-trend reports. Yet, faked figures are not the whole reason the government has been describing a slide into a depression as an "economic recovery." The level of purchases of the U.S. has been kept up significantly, by using more and more borrowing to buy goods and services way above our national income. That is how we were turned from the world's major creditor, into the world's biggest debtor. Subtract the increase of combined public and private debt from the GNP figures, and the result is a figure with some resemblance to the fact of collapsing infrastructure, agriculture, and manufacturing.

Very simply, we must earn more. On this point, Speaker Jim Wright is on the correct track in his thinking. We need an investment boom in basic economic infrastructure, agriculture, and manufacturing, especially in high-technology capital goods of competitive export-quality. We must study the success of Peru's economy under President Alan Garcia, and recognize that similar reforms throughout Central and South America, for example, will reopen the precious export markets upon which we used to depend so much. Instead of squabbling with Japan and Western Europe, over shares of the world's worsening poverty, we ought to be negotiating fair shares of a world whose markets are expanding.

I find it not surprising that the Cargill and Trilaterals who are the softest on Moscow, should be leading in organizing trade wars which can help no one but Moscow.

Authorized and paid for by the LaRouche Democratic Campaign, Edward Spannaus, Treasurer

STATEMENT BY
NATIONAL PRINTING EQUIPMENT AND SUPPLY ASSOCIATION, INC. (NPES)
BEFORE THE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
MARCH 6, 1987

I. INTRODUCTION

National Printing Equipment and Supply Association, Inc. (NPES)

The National Printing Equipment and Supply Association, Inc. (NPES) is a national trade association whose member companies are engaged, within the United States, in building, manufacturing, repairing, selling, importing for sale or distributing machinery, equipment and supplies used in the Graphic Arts Industry. Together with associate members (such as trade publications and firms offering related graphic arts services), NPES membership currently stands at approximately 260 companies which account for about 90% of domestic production of graphic arts equipment and supplies. Nearly 60% of NPES members are small businesses with gross sales of $5 million or less.

NPES welcomes and appreciates this opportunity to submit testimony to this distinguished Subcommittee on a topic of great importance to our nation. Specifically, we speak of the United States international industrial competitiveness. Because this is the first time that NPES has filed testimony with this Subcommittee, a brief description of our industry seems appropriate.

The Printing Equipment and Supply Industry

America's graphic communications industry requires an enormous variety of products to do its work. The printing equipment and supply industry provides the products that meet these needs. The most obvious of these products, printing presses, represent just one stage in the long and technically complex task of transforming ideas into printed materials. Every printing job, from the simplest to the most elaborate, goes through the same basic states: pre-press, press, and bindery.

The products employed in the printing industry include typesetting systems, page composition systems, negative- and plate-making equipment, presses of all types, press accessories, and binding and finishing apparatus. Printing industry supplies include papers, films, plates and chemicals for phototypesetting and other pre-press functions.

Printing Trades Machinery (SIC 3555) is identifiable as a discrete category within the more general classification of Special Industry Machinery of the Department of Commerce Standard Industrial Classifications System (SIC). The graphic arts supplies portion of the industry is less readily identified, as these products typically are not aggregated as a separate group, but are spread across several broader industry categories, such as chemicals and photographic supplies.

The total market for printing equipment in 1985 approached $2.1 billion in orders and $2.5 billion in product shipments. Shipments of printing industry supplies totaled approximately $1.7 billion in 1985.

America's Graphic Communications Industry

The relatively modest size of the printing equipment and supply industry belies its critical role in supporting the much larger, crucially important graphic communications industry.

According to the 1982 Census of Manufacturers, of the 20 major manufacturing groups included in the SIC, printing and publishing ranks first in the number of establishments. There are more than 90,000 printing establishments nationwide, including 53,000 separate printing firms and an estimated 40,000 additional businesses that have their own in-plant printing operations. Printing and publishing alone employ some 1.4 million people, representing a total payroll of close to $30 billion annually. Total sales for 1986 are expected to exceed $118 billion.

Achieving Consensus

Because of the diverse nature of the membership of our Association, encompassing manufacturers and distributors of both foreign and domestically produced graphic arts machinery and supplies, we are currently engaged in a process of achieving a consensus policy position on United States international industrial competitiveness, not dissimilar from the Trade Subcommittee's task of achieving an equitable policy balance in this area. As our more comprehensive position statement is finalized, we will happily share it with the Subcommittee. Meanwhile, at this time we would like to submit for your recent committee hearing record of January 1987 the following comments on several specific topics which we believe to be especially relevant to United States international industrial competitiveness.

II. U.S. INTERNATIONAL INDUSTRIAL COMPETITIVENESS

America's competitive preeminence in world commerce has eroded over the past decade. We are being challenged in the trading arena by the European community and the industrializing nations of the Pacific Rim and Latin America. We believe this to be a serious cause for concern, because sustaining America's competitiveness is key to maintaining our standard of living, and our national security.

Deteriorization of U.S. Manufacturers Trade Performance

It is no secret, but it bears repeating that the United States has suffered a serious erosion of industrial competitiveness vis-a-vis other leading industrial nations during the 1980's, reflected in a cumulative trade deficit for the 1980-1986 period of $630 billion and a 1986 trade deficit of $170 billion.

According to the recently published Commerce Department Report, United States Trade: Performance in 1985 and Outlook, (U.S. Department of Commerce, International Trade Administration, October 1986) the deterioration in U.S. merchandise trade performance --- trade in goods --- is the dominant factor in the growing current account deficits of recent years. And within merchandise trade, manufacturers trade is shown to be the key factor in growth of U.S. deficits. The report concludes from this that improved manufacturers trade performance is crucial to restoring U.S. trade and current account balances to sustainable levels. We fully agree with this assessment. Indeed, there is no other potential source of major gains, because continuing very large manufacturers trade deficits cannot be offset by surpluses in other goods and services trade accounts. This is self evident in light of the fact that manufactured goods represent the heart of U.S. trade, currently accounting for 68 percent of U.S. exports and 75 percent of U.S. imports, with the U.S. trade deficit in manufacturers equal to 84 percent of the total trade deficit.

Therefore the National Printing Equipment and Supply Association, Inc. believes that the U.S. Government and U.S. business should make the achievement of a trade balance an economic and strategic goal of the United States. Increased U.S. international industrial competitiveness is the heart of these goals.

As earlier noted, the topic of U.S. international industrial competitiveness is currently under review by our Association's policy-making Committees and a comprehensive statement on the subject is anticipated shortly. However, for the record of the Trade Subcommittee's hearings, we wish to submit the following recommendations which are already standing NPES Government Affairs policy positions, as they relate to strengthening U.S. international industrial competitiveness.

Increase the Supply and Decrease the Cost of Productive Capital to American Manufacturers and their Customers

A key element in maintaining American manufacturers' international competitiveness is keeping industrial productivity high. And a linchpin in sustaining high industrial productivity is encouraging and supporting capital investment by U.S. business. Unfortunately, in our estimation, recent government policies seem to undercut this objective. Specifically, we were greatly disappointed by the significant curtailment of capital investment tax incentives which occurred during the enactment of the Tax Reform Act of 1986 (TRA '86).

During the 99th Congress NPES was a member of the Invest to Compete Alliance (ITCA). ITCA, a group of individuals, trade associations and large and small manufacturers, banded together to impress on Congress the importance of sustaining capital investment in America's industrial base which is the underpinning of our national economic strength and vigor. Specifically, we supported retention of the Investment Tax Credit (ITC) and the continuation of the ability of U.S. manufacturers to quickly recover the cost of productivity-improving investment in industrial machinery by the rapid depreciation of that investment under the Accelerated Capital Cost Recovery System (ACRS), which was a key element of the economic recovery that followed the enactment of the Reagan Administration's Economic Recovery Tax Act of 1981 (ERTA).

Apparently, the over generousness of some aspects of ACRS, and the unfortunate abuses by some taxpayers of some aspects of the system jaundiced the view of many members of the Administration and Congress toward what we regard as a proven successful method of encouraging and sustaining investment in the U.S. industrial base.

Accelerated Capital Cost Recovery has a proven record of success. For nearly 25 years the ITC has been an effective policy tool. During times of repeal, investment declined, necessitating later reinstatement. While we do not necessarily disagree with the philosophy of cutting effective tax rates embodied in TRA '86, we, nevertheless, feel that policies such as the ITC and Accelerated Capital Cost Recovery are much more targeted and purposeful methods of bring about the desired objective of a modern and competitive U.S. industrial manufacturing base.

Therefore, because this is beyond the legislative jurisdiction of this Subcommittee, we take this opportunity to urge the full Committee to consider reviewing this year what we regard as the weak capital cost recovery provisions of TRA '86, before another year goes by with inadequate investment in America's industrial base.

Minimize the Competitive Burden of Litigation and Liability Costs on American Industry by Enacting Fair and Balanced Federal Uniform Product Liability Reform Legislation

Although not usually thought of in the context of international industrial competitiveness, the current crisis in runaway insurance, litigation and liability costs on American industry is a very definite competitive handicap for U.S. manufacturers. And while the burden of the general tort liability crisis has been felt in nearly every segment of society during the past several years, the impact of the unfair and unpredictable product liability system has been shouldered by U.S. manufacturers for over a decade.

In this regard, NPES supports fair and balanced federal uniform product liability reform legislation. Specifically, we strongly supported legislation introduced during the 99th Congress, S. 2760, which enjoyed wide bipartisan support in the Senate, but was blocked in the final days of the 99th Congress by a small group of Senators who are apparently more concerned about maintaining the lifestyle of some members of the trial bar than ensuring that injured people received quick adequate recovery for injuries, that U.S. consumers do not have to pay the price of an inequitable and inefficient U.S. civil justice system, and that U.S. manufacturers can afford to stay competitive with their foreign counterpart.

With regard to the last point, the Committee Report on S. 2760 (Report 99-422) sheds some very useful light on this subject wherein it states:

> The adverse effects of the product liability system have carried over into international trade. American manufacturers and product sellers generally pay product liability insurance rates which are 20 times higher than those in Europe. This disparity is attributable in large part to the uncertainties and costs of the American tort litigation system. As a result of this disparity, American manufacturers and product sellers may be at a competitive disadvantage in both foreign and domestic markets. Insurers generally do not discount premiums where a manufacturer exports it goods, because there is always the possibility that a product-related suit will be brought in the United States. Thus, each U.S. product shipped abroad contains an insurance cost element greater than that of a foreign competitor. With respect to domestic markets, the effect of the current uncertainties in product liability law is similar. The price of imported products can be lower because product liability insurance rates for those products are lower.

Finally with regard to this point, we commend the Reagan Administration for including in their omnibus competitiveness proposal under Title IV of that package the "Product Liability Reform Act of 1987."

III. SUMMARY

In summary, we believe that failure to take these modest actions will likely increase pressures for damaging protectionist measures such as increased tariffs, quotas, and other nontariff barriers.

We further believe that the U.S. Government should make the achievement of these goals one of its highest priorities; and that enhancing U.S. competitiveness should be a touchstone for future legislation and other major policy initiatives.

Accordingly, NPES urges the Subcommittee, the Congress and the Administration to take into account the effect on U.S. competitiveness in the drafting of legislation and the development and implementation of national policies.

Once again, we thank the Subcommittee for this opportunity to testify and would be happy to respond to any questions.

STATEMENT OF THE OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR

INTRODUCTION

The attached statement is submitted on behalf of the Office of the Chemical Industry Trade Advisor. OCITA is a coalition of the following trade associations: the Chemical Manufacturing Association; the National Agricultural Chemicals Association; the Society of the Plastics Industry, Inc.; and the Synthetic Organic Chemical Manufacturers Association.

I. POSITION STATEMENT ON MULTILATERAL TRADE NEGOTIATIONS

Background

The statement outlines a set a principles which OCITA believes should be addressed by the Administration in its participation in any new round of multilateral trade negotiations. OCITA is of the opinion that the emphasis in any new round should not be solely on tariff cutting but should also address the elimination of existing trade barriers. These barriers include foreign market access, certain tariffs, trade distortions caused by foreign investment practices, ineffective protection of intellectual property rights and the lack of an effective procedure for settling disputes to international trading rules.

If the preparations that are underway between the United States and other GATT signatories will result in a new Round of MTN in an effort further to expand world trade multilaterally, OCITA supports such an objective. However, OCITA believes that a new Round should address a number of issues which are crucial to the long range competitive position of the U.S. chemical industry. The emphasis of negotiations should primarily be on efforts to eliminate existing trade barriers that unfairly restrict trade flows. OCITA urges that the following principles for U.S. participation in a new Round be adhered to on each of these issues.

U.S. NEGOTIATING POLICY

A new Round of MTN must foster the development of sound trading and investment practices. U.S. participation in a new MTN should include as priority objectives the elimination of trade distorting practices and the expansion of U.S. export opportunities. OCITA believes that the reduction of U.S. tariff rates should not be among the primary negotiating objectives for a new MTN.

The international trade interests of the United States should be given priority over foreign policy concerns in negotiating agreements during the MTN. Foreign policy concerns, other that those of a national security nature, should not affect decisions on U.S. trade policy.

Adequate and timely opportunities should be provided for U.S. chemical industry input and review during the process of establishing negotiating objectives, as well as during the negotiations themselves. Moreover, OCITA strongly urges that ample opportunity be provided for the private sector to comment, and for Congress to debate and amend any tentative agreements made in the negotiating process, before the negotiated agreements are submitted to the Congress for final approval.

MTN authority should not restrict the President from conducting separate trade negotiations with other countries during the course of an MTN. In addition, the Administration should not impair the implementation and timely resolution of actions brought under existing U.S. trade remedy laws during the course of MTN negotiations.

GATT DISPUTE SETTLEMENT PROCEDURES

OCITA believes that the GATT dispute settlement procedure must be improved to include binding, time-certain requirements for the resolution of disagreements on issues covered by GATT rules. Resolutions of disputes already taken to GATT should be the first step in this process.

FOREIGN MARKET ACCESS

OCITA maintains that GATT signatory countries should be required to grant U.S. exporters fair access to their markets without unreasonable barriers or conditions, in exchange for their retaining fair access to U.S. markets.

TARIFF NEGOTIATIONS

The emphasis of a new Round should not be on tariff cutting. The reduction, or even the elimination, of tariffs on some chemical products may be appropriate, while reductions of tariffs on others may impose an undue burden on U.S. manufacturers. We urge, therefore, that any reductions which are proposed be well-justified, modest, and phased in over an appropriate period of time.

In the interest of reaching a balanced and equitable trade and tariff agreement, the United States should negotiate changes in chemical tariffs only on the basis of request lists, rather than imposing formula cuts across the board or automatically eliminating tariffs below certain levels. Also, reduction or elimination of chemical tariffs should not be offered in exchange for concessions in non-chemical sectors.

OCITA urges that any U.S. plan to reduce or eliminate tariffs should have provisions enabling affected industries to obtain exceptions for import sensitive products. We believe that these conditions should be included in any legislation authorizing U.S. participation in the MTN and, specifically, in legislative language providing tariff negotiating authority for a new MTN Round. (OCITA's proposed legislative language, which is attached to the end of the statement, provides for negotiating authority as an amendment to Section 101 of the Trade Act of 1974 (Attachment A)).

OCITA has drafted proposed legislative language which would accomplish three negotiation objectives: (1) ensure tariff reciprocity within industry sectors to the maximum extent possible; (2) ensure that the President will conduct tariff negotiations on the basis of article specific requests and offers, not formulas for across-the-board tariff reductions; and (3) provide exemptions from tariff cuts for import sensitive items.

As defined in the legislative language concerning the last objective, the OCITA proposed legislative language (Attachment B, also at the end of the statement) would amend sections in Title I of the Trade Act of 1974, to:

(1) Require the U.S. International Trade Commission (USITC) to determine whether a negotiated duty reduction on an article the President wishes to negotiate will seriously injure domestic producers of a directly competitive article (The USITC will make such a determination only if it has reason to believe such injury will occur or a domestic company files a petition alleging that it will occur);

(2) Require a public USITC hearing in such an investigation;

(3) Prohibit the President from implementing a duty reduction the USITC determines will seriously injure the domestic industry, unless he determines such a reduction is in the interest of national security.

(4) Require a public explanation for overriding any USITC injury determination; and

(5) Prohibit the President from including a duty reduction in a "fast track" trade legislation if the USITC determines the reductions will seriously injure domestic industry, and the President does not override that determination.

OCITA drafted this language as an amendment to H.R. 3. The OCITA legislative language could, of course, be easily adapted to amend any other pending trade legislation, or it could be introduced independently. We urge the Committee to include the concepts contained in this OCITA proposal in its trade reform bill.

FOREIGN INVESTMENT PRACTICES

OCITA believes that a GATT code on foreign investment practices should be negotiated among the signatory countries. Such a code should be based on national treatment for foreign investments and should ensure the elimination or substantial reduction of trade distortions caused by foreign investment practices, including:

(1) Prohibitions or restrictions on foreign investment in certain economic sectors, such as chemicals;

(2) Review of foreign investment proposals by government agencies and limitations on the amounts and percentages of equity that can be owned by foreigners;

(3) Performance requirements, including mandated local purchase of equipment, supplies, and services, and the share of production which must be dedicated to exports;

(4) Limitations on royalties and licensing; and
(5) Limitations on repatriation of earnings.

II. OCITA POSITION ON ADMINISTRATVE PROCESS FOR REVIEW OF DUTY SUSPENSION REQUESTS

Introduction

OCITA proposes that a procedure be set up in an Executive agency whereby manufacturers could petition for duty suspensions on products they desire to import which are not produced in the United States. This procedure would parallel the existing legislative procedure but would have some significant advantages.

When a manufacturer has to pay duties on products imported into the United States which are not manufactured in the United States and which do not compete with United States products, the purpose of the tariff duty is not carried out. There is no United States industry to protect. Rather, the only effect of the duty is to place an additional cost on the person that must pay the duty. Many chemicals are imported as raw materials or components of a final product manufactured by the importer or ultimate user. Because many final products compete with foreign imports, decreasing the cost of raw materials to the U.S. manufacturer would increase its competitiveness and generally strengthen the domestic industry.

In recognition of the fact that placing a duty on products that do not compete with any United States industry places an unnecessary cost on the ultimate United States user of the product without any corresponding benefit to any United States industry, Congress has often passed legislation suspending the duties on such products. In 1984 Congress enacted 63 duty suspensions 76% of which were for chemicals and it has a large number of pending requests at the present time, many of which are for chemicals.

The Congressional procedure, however, has many disadvantages, most of which are inherent in the legislative process. There is no mandatory procedure to require that the legislation be considered, nor are there any clearly established standards for determining which duty suspension requests should be granted and which denied. The timing of the process is extremely uncertain, as Congress may pass legislation at any time or never pass it at all, thereby making efficient corporate planning and contracting impossible. Also, it is all too easy for legislation to suspend duties to get lost in the ongoing crush of legislative business, in which only the most important matters are likely to receive consideration.

These disadvantages could be avoided if Congress were to create an administrative procedure to handle non-controversial duty suspension requests. Such a procedure would be particularly appropriate for most duty suspensions because of the commercial and economic nature of the issues involved in such requests and the continuing volume of requests that can be expected.

It should be emphasized that this proposal is intended to be a supplement to the current Congressional system of granting duty suspensions. Persons would be free to request Congress to suspend a tariff in any case where the administrative system was viewed as inadequate or unavailable because of the limitations on eligibility of articles for administrative duty suspension. The following is a detailed outline of the proposal.

THE PROPOSED ADMINISTRATIVE PROGRAM

The President may, at his discretion or upon the request of an eligible person as described below, suspend the tariff duty on any product imported into the United States whenever the President finds that there is (1) no domestic production of that product or directly competitive [1] products and (2) no prospective domestic producer who demonstrates both the capacity and the bona fide intent to produce the product or directly competitive products in significant quantities. In addition, the President may decline to grant a duty suspension request if he finds that the manufacturer of an article directly competitive with an article manufactured from the imported article would be adversely affected. The duty may be suspended pursuant to this procedure for a period not to exceed three years. Domestic manufacturers would be given notice and the right to object to any such proposed suspension. The President may also reinstate a previously suspended duty prior to the time that it would be automatically reinstated, if he find that substantial domestic production of the product or a directly competitive product has begun after the suspension.

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[1] The term "directly competitive" should be defined as functionally interchangeable. See § 201 of the Trade Act of 1974, 19 U.S.C. § 2251; *Potassium Permanganate,* Inv. No TA-201-54, USITC Pub. No. 1682 at 4.

Notwithstanding a finding that there is no domestic production and no domestic producer has demonstrated the capacity and bona fide intent to produce the product or a directly competitive product in substantial or significant quantities, the President may find, for foreign policy reasons or to maintain needed flexibility for the purposes of ongoing or planned international negotiations relating to international trade, that the relevant duty should not be suspended. If the President finds that a duty otherwise eligible for suspension should not be suspended for such reasons, he shall state the reasons in the Federal Register notice announcing his decision on all requests for duty suspension.

The President may delegate to such agency as he finds appropriate the authority to process requests for duty suspensions and reinstatements, to make any necessary factual investigations, and to make recommendations to the President regarding whether or not duties should be suspended or reinstated.[2] The decision of the President on suspension or reinstatement of a tariff duty shall be final and shall not be subject to review by any court.

ADMINISTRATIVE PRACTICE

Interested persons may file requests for duty suspension or reinstatement with the regulatory agency designated by the President. For the purpose of requesting a duty suspension, an interested person will be defined as either a direct user or reseller of the imported product or a manufacturer who incorporates the imported product in a manufactured product or otherwise uses the imported product in the manufacturing process. For the purpose of requesting the reinstatement of a previously suspended duty, an interested person will be defined as a domestic producer of the product in question or a directly competitive product.

Each request should contain sufficient information to justify the requested duty suspension or reinstatement. If the designated agency finds from available information that it is clear that a request does not warrent consideration, the agency will so inform the party making the request and will, to the extent that the request has been filed before the deadline for acceptance discussed below, allow the intersted party an opportunity to refile.

The public will be notified of the receipt of a petition by publication in the Federal Register and an appropriate trade publication and be given an opportunity to comment on it. If the President determines from those comments or his own investigation that (1) one or more domestic producers of the product or a directly competitive product exists or (2) one or more domestic producers have the intent to manufacture the product or a directly competitive product in significant quantities in the near future, the petition must be denied. In addition, if the imported article is used as a substantial input in the manufacture of a product that is like or directly competitive with a domestically manufactured product, the President may deny the petition if he determines that granting it would adversely affect a U.S. producer.

Requests for duty suspension or reinstatement shall be reviewed on an annual basis, pursuant to the following schedule:

(1) March 1—announcement that requests will be considered.

(2) April 5—deadline for receiving requests.

(3) May 1—announcement of accepted requests.

(4) July 15—public hearings and deadline for submission of written briefs supporting or opposing a request.

(5) January 1—effective date of duty suspensions or reinstatements.

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[2] A similar delegation procedure has been followed in the administration of the GSP program. There, the President has delegated to the Office of the United States Trade Representative ("USTR") the responsibility for reviewing and investigating requests that articles be designated as eligible for GSP or that GSP duty-free treatment be withdrawn, suspended or limited. 15 C.F.R. Part 2007. The USTR then recommends appropriate action to the President.

III. STATEMENT ON INTELLECTUAL PROPERTY RIGHTS PROTECTION

Background

1. U.S. manufacturers enjoy strong protection of intellectual property rights at home. It is this protection that offers the incentive to dedicate significant resources to develop and commercialize new products. The protection of proprietary data provides sufficient time to recoup the high research and development costs in many sectors of the chemical industry. Lacking other commercial considerations, the U.S. manufacturer has a strong incentive to export goods to those offshore countries which have intellectual property protection laws similar to those in the United States.

Conclusion: Intellectual property rights similar to those in the United States help increase exports and product development efforts because the reward potential is not confined to the domestic market alone.

Given appropriate commercial circumstances, the U.S. manufacturer will also export to countries with inadequate property right protections and may achieve adequate returns. He does, however, run the risk of a third party deciding to duplicate the product or data and manufacture it himself. In the absence of strong intellectual property protections, this pirating activity is common. Typically, the "pirate" has an economic advantage because he has not incurred the research and development costs borne by the original invenstor. Consequently, he is able to market the product at prices that are significantly less than those of the U.S. manufacturer. The "pirate" may try to extend sales to other countries with weak intellectual property rights protection, further undercutting the U.S. manufacturer's overseas market. In addition to research and development costs, the U.S. manufacturer is likely to have devoted more resources to the development of a foreign market than would be needed to establish a domestic market. He is, therefore, likely to be deterred from attempting to establish a market in countries where weak patent or trademark protection exists. Any trend towards reducing intellectual property right protections abroad could have a detrimental impact on U.S. exports.

OCITA position

The U.S. Department of Commerce and the Office of the U.S. Trade Representative hold regular meetings with U.S. trading partners to negotiate trade matters. OCITA belives that the U.S. delegation should insure that property rights protection will be an integral part of these negotiations. Furthermore, trade arrangements should take into account the effectiveness of protecting U.S. intellectual property rights in any given country. OCITA has developed the following objectives which we believe will improve the protection of intellectual property rights.

OBJECTIVES FOR IMPROVEMENT OF THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

A minimum standard patent term which takes into account regulatory review delays and other testing and review requirements which must be met before new products may be manufactured or sold commercially. The 20-year term provided in the European Patent Convention would be an appropriate minimum standard for all countries.

Allowance of patents of sufficient scope to protect the invention. In particular, full patent coverage for new substances, i.e., chemicals, pharmaceuticals and products of biotechnology, in addition to the limited process of product-by-product patent coverage now allowed in some foreign countries.

Exemption from requirements to "work" patents in countries where local needs can be met by importation and where local manufacture is not economical.

Freedom from unreasonable tariff barriers against imports of locally patented products in cases where the patent owner elects to meet local market requirements from foreign production facilities.

Protection of the exclusive patent right from compulsory licensing, except in cases of actual patent abuse, from the granting of exclusive licenses to parties other than the patent holder, and from other unfair practices that amount to expropriation.

Prompt and adequate compensation where compulsory licensing is required, and in cases where patents are expropriated.

Elimination of unfair "me-too" registration—a period of exclusive use, e.g., 15 years, should be provided for testing information developed to satisfy governmental pre-marketing requirements for such products as agrichemicals and pharmaceuticals.

Protection for intellectual property which is transferred into a country through joint ventures or technology licensing agreements.

Reversal of the burden of proof in cases of infringement of process and product-by-product patents.

Minimum standards of trademark and copyright protection.

Reasonable fees for the application for, and maintenance of, patents, trademarks and copyrights.

Protection against onerous bureaucratic delays in the application, ganting and maintenance of patents, trademarks and copyrights.

Availability of injunctive relief against infringers of patents, trademarks and copyrights.

A commercial counterfeiting code, including means for effective enforcement.

Expeditious and effective dispute settlement procedures that draw on the technical expertise of the World Intellectual Property Organization (WIPO) and the trade expertise of GATT.

IV. OCITA POSITION ON INDUSTRIAL TARGETING

Background

For the past several years, the question of whether industrial targeting on the part of foreign governments significantly distorts international trade patterns and, if so, how targeting practices should be made actionable under U.S. trade laws has been the subject of considerable debate. In Section 625 of the Omnibus Trade Act of 1984, the Comptroller General and several Executive Branch agencies—Commerce, Labor, and the USTR—were mandated to undertake studies of foreign industrial targeting to determine the scope of targeting problems and to assess whether existing U.S. laws adequately address them. In addition, the International Trade Commission (USITC) has prepared extensive analyses of targeting practices in several countries. Most of these studies were completed in June of 1985.

As defined by the USITC targeting is: Industrial targeting means coordinated government actions taken to direct productive resources to help domestic producers in selected industries become more competitive.

In essence targeting encompasses government intervention in international trade patterns, in a manner that causes market distortions and creates a competitive advantage in export markets. Much of the discussion about how to address targeting has focused on the extent to which current trade laws cover the practices in question. In this regard the study prepared by USTR and Commerce suggests six areas where current laws may be inadequate with respect to targeting:

They do not address GATT-consistent home market protection.

They do not offset the economic effect of targeting when they are separated from the government practices by time.

They do not counter "multiplier effects" that arise because commercial banks and others might give a targeted industry preferential terms.

They do not fully offset the effect of targeting in third world country export markets.

They do not counter the entire benefit associated with unfair R&D assistance.

They do not address cooperation among private firms which enhances competitiveness.

Targeting language was considered by the 99th Congress and was included in both H.R. 4800 and S. 1860, and is addressed in H.R. 3 in Section 113 et. seq.

CURRENT ISSUES SURROUNDING THE INCLUSION OF TARGETING LANGUAGE IN U.S. TRADE LAWS

There are basically four issue areas in the current debate over how to approach targeting.

Definitions

It is frequently claimed that targeting is difficult to define, or that an internationally accepted definition of the problem is lacking. With the attention and analysis devoted to targeting in recent years, this definition cited above, trade distorting practices on the part of governments are recognized to include the following in combination: home market protection; special tax benefits; anti-trust exemptions or condoned anti-competitive behavior; scientific and technological assistance; financial assistance; foreign investment controls and government ownership. Some or all of these practices can lead to a "government created" comparative advantage for the targeted industry in question.

As to internationally agreed definitions it is true that GATT has not yet explicitly recognized targeting as an unfair trade practice. U.S. leadership in demonstrating unwillingness to tolerate the effects of targeting, however, would help focus consideration of this problem duirng the upcoming multilateral trade talks.

It should be noted also that there is legitimate cause for concern that new laws and rules aimed at unfair targeting might be misapplied to certain developing country policies such as five year development plans. Criteria would need to be developed whereby distinctions could be drawn between valid government efforts to marshal resources toward achieving economic growth and development, and those policies and practices that lead to unfair competition.

U.S. targeting practices

Is is widely believed that the United States engages in targeting itself, to an extent that our recognition of industrial targeting as an unfair trade practice would render U.S. exports vulnerable to retaliation. Studies made of U.S. targeting practices indicate that this fear is exaggerated. A Congressional Budget Office analysis prepared in 1984 found that direct U.S. government support represents only 0.5 percent of value added in the manufacturing sector. With respect to high technology industries, especially those thar are defense-related, U.S. government support is justified on national security grounds, not as a means to enhance international competitiveness. Where U.S. government support has been afforded to export industries, such as aerospace and agriculture, the effect of that support is unclear and these sectors have been subject to countervailing duty action for some time. In any event, advocates of targeting language support an exemption for primary agricultural products.

Presidential discretion and an injury test

Most formulations of targeting language call for explicit recognition of targeting under Section 301. In addition to defining targeting as an unfair trade practice, that would be actionable under this Section, proposed language would make retaliation mandatory in the event of a positive determination and a finding of injury. The injury test would not apply to other Section 301 cases. The intent is to balance the requirement for a mandatory response against the need for injury to be demonstrated thus avoiding "frivolous" petitions.

Limitations on Presidential discretion to provide trade relief in not just Section 301, but other trade remedy statutes as well, is a contentious element of the current trade debate. Proponents of limiting the President's discretion reflect a more general frustration with the Administration's lack of aggressiveness in enforcing existing U.S. trade laws.

Section 301 vs. section 201

As a matter of general practice, the intent of Section 301 of the trade statutes has been recognized as being that of gaining access to foreign markets, while Section 201 is intended to provide relief from injurious imports into the U.S. Thus, it is argued by some that targeting should properly be addressed under Section 201 or a combination of Sections 201 and 301. The combined approach would be very costly for petitioners to pursue. Moreover, the effect of targeting can be felt both in domestic markets and in third world countries where U.S. exports may be displaced. With minor adjustments, Section 301 is viewed as offering the necessary flexibility to address multi-market impacts of targeting. Moreover, Section 201 applies to injurious imports from all sources, whereas targeting may involve only one specific country. Additionally, while Section 201 addresses injurious imports, these imports have come about through fair trade. Section 301 concerns itself with unfair trade practices. Thus, Section 301, in addressing actions of foreign governments "which burden or restrict" U.S. commerce, may be a more appropriate vehicle for providing relief from targeting practices.

OCITA position

OCITA supports the inclusion of targeting language in comprehensive trade law reform legislation.

OCITA endorses the U.S. International Trade Commission's definition of targeting.

Section 301 of the Trade Act of 1974 should be amended to identify targeting as an unfair trade practice. (As appropriate, special consideration should be given for the needs of developing countries.)

Assuming an affirmative finding of targeting which has caused injury, remedies should be mandatory, but should still provide for ultimate discretion on the past of the President.

Relief granted should be equivalent to the injury incurred.

The Administration should be urged to conduct meaningful discussions aimed at reaching agreement on the stated GATT Ministers declaration on targeting.

V. OCITA POSITION ON TRADE LAW REMEDIES CONCERNING THREATENING NATIONAL SECURITY

Current law

Section 232 of the Trade Expansion Act of 1962 authorizes the President to restrict imports of products which threaten national security. The law requires the Secretary of Commerce to begin an investigation of the potential national security impact of imports of a product upon the request of another government agency or department, an interested party, or his own volition. If the Secretary determines that there is some threat to national security, he must advise the President within one year of the initiation of the investigation. However, the President is not obliged to answer this petition within a specific period.

Sampling of proposals made for legislative changes

Several proposals have been made to establish deadlines for Presidential action, such as a requirement that the President act within one year after receiving the Secretary's advice. Another suggestion would establish a 90-day deadline. Some would implement the Secretary's recommendations if the President has not acted within 90 days after receiving the report. Another suggestion would transfer the authority from the President to the USTR and would require the USTR to act within the 90 says after receiving the Secretary's recommendations.

OCITA position

Certain products (including some chemicals) are essential to the United States in times of national emergency. The Federal Government should ensure that import competition does not hinder the capacity of domestic industries to guarantee adequate supplies of these essential products. Legislation that would provide for deadlines will force the Administration to focus on questions of national security and imports in a timely manner. However, transferring current presidential authority to the USTR seems ineffective since the USTR is part of the Administration and as a practical matter would not act without the President's authority.

Certain chemical feedstocks as well as derivative products could fall into the category of being essential to national security. The issue as to what extent the national security and foreign policy concerns outweigh the economic benefits of short term lower prices, and the question of what national security costs should be borne by the taxpayers to protect against supply disruption need to be addressed.

OCITA supports the strengthening of Section 232 of the Trade Expansion Act of 1962 and recommends the following changes to achieve this aim.

Private sector petitions to initiate a Section 232 investigation (or those self-initiated by the Government) must be reviewed by the Secretary of Commerce and within 90 days a decision must be made by the Secretary whether to proceed with the investigation or terminate it.

Provide for mandatory deadlines in which both the Secretary of Commerce and the President must act on investigations initiated by the Department of Commerce which make recommendations to the President. The recommendations of the Secretary of Commerce to the President must be made no later than 6 months after an investigation is initiated and the President must act upon the recommendation within 90 days and make public the reasons for the action taken.

VI. STATEMENT ON EXPORT-IMPORT BANK LOANS

In 1985, shipments of chemical and allied products were a record $217.4 billion. In spite of this record level of shipments, the balance of trade in chemicals for 1985 declined for the fifth straight year to $7.2 billion. That is a drop of 16 percent from 1984 and 41 percent below the record $12.2 billion chemical trade balance in 1980. Naturally, the U.S. chemical industry would like, at least, to maintain, if not increase, a positive trade balance. There are many factors that contribute to the U.S. balance of trade, but there is one particular influencing factor which involves the EXIM Bank that should be addressed: The potentially adverse impact that EXIM Bank financing could have on the U.S. chemical industry.

The readily available sources and favorable costs of natural resources, the significantly lower levels of costs associated with regulatory compliance and generally lower labor costs, in addition to certain unfair advantages some foreign country suppliers enjoy, make it very difficult for U.S. chemical companies to compete in some international markets. The overcapacity present in many parts of the world further depresses prices. The United States has contributed to the problems through direct

EXIM loans, credits or loan guarantees to build or expand chemical plants and facilities in some 20 countries around the world.

Before worldwide chemical productive capacity is increased through EXIM Bank financing of new chemical plants or chemical plant expansions, the U.S. chemical industry should have the opportunity to be aware of, review, and comment on loan applications involving the construction or expansion of chemical related products. While there may be some EXIM Bank analysis and evaluation of loan applications involving chemical related sectors, with respect to the proposed loan's impact on the domestic industry, the private sector is generally not afforded adequate opportunities for input. Such input could be accomplished under the Administrative Procedures Act through notice and comment, in which the submission of a loan application and the salient points of that application would be published in the Federal Register with sufficient time for interested parties to provide written comments. Such a process would at least provide the opportunity for knowledgeable input by affected parties, including the necessary input to properly assess any effects that may result from adding worldwide capacity primarily intended for export to third countries.

In addition to the EXIM Bank's staff analysis, appropriate analysis and evaluation by the Department of Commerce and/or the U.S. International Trade Commission may include input from the affected public sector. OCITA believes such an impact determination is completely consistent with the Export-Import Bank's legislative mandate, and that such a determination should be an integral part of EXIM's loan review process.

[ATTACHMENT A]

AMENDMENT To H.R. 3, a bill to enhance the competitiveness of American Industry, and for other purposes

Viz: On page 160, between lines 18 and 19, insert the following new subsection:

(d) BASIS FOR, AND OBJECTIVE OF, TARIFF NEGOTIATIONS.—Section 101 (19 U.S.C. 2111) is further amended by adding at the end thereof the following new subsection:

"(e) If the President enters into tariff negotiations under this section, then the President shall—

"(1) conduct such negotiations on the basis of requests and offers for changes in the rates of duty on specific articles and shall not negotiate on the basis of any formula for the reduction or elimination of duties on more than one article, and

"(2) to the extent consistent with the objective of maximizing economic benefit to the United States, conduct such negotiations to the extent feasible with the objective of obtaining comparable tariff levels within manufacturing sectors.

"The President shall not enter into negotiations under section 102 to negotiate tariff levels.".

[ATTACHMENT B]

AMENDMENT To H.R. 3, a bill to enhance the competitiveness of American Industry, and for other purposes

Viz: On page 160, between lines 18 and 19, insert the following new subsection:

SEC. 153A. EXCLUSION OF IMPORT SENSITIVE ARTICLES FROM TARIFF NEGOTIATIONS.

(a) USITC DETERMINATION.—Section 131 (19 U.S.C. 2151) (relating to International Trade Commission advice) is amended by—

(1) inserting "AND DETERMINATIONS" after "ADVICE" in the caption thereof;

(2) striking out "Within" in subsection (b) and inserting in lieu thereof "(1) Within";

(3) adding at the end of subsection (b)(1), as redesignated by paragraph (2) of this subsection, the following new paragraph:

"(2) Upon receipt of a list described in paragraph (1), if (A) the Commission has reason to believe that the domestic industry producing an article that is directly competitive with any article on such list would be harmed by reason of increased imports of that article, or (B) a domestic producer of an article that is directly competitive with any article on such list files a petition with the Commission alleging that the domestic industry producing such article would be harmed by reason of increased imports of that article, then the Commission shall immediately initiate an investigation to determine whether the domestic industry producing such directly competitive article would be harmed by reason of increased imports of that article.

The Commission shall report its determinations on the basis of such investigations to the President together with its advice under paragraph (1) of this subsection.";

(4) redesignating subsection (e) as subsection (f);

(5) inserting after subsection (d) the following new subsection (e):

"(e)(1) In making its determinations under subsection (b)(2), the Commission shall consider, among other factors—

"(A) the volume of imports of the article which is the subject of investigation;

"(B) the effect of imports of that article on prices in the United States for directly competitive articles, and

"(C) the impact of imports of such article on domestic producers of directly competitive articles.

"(2) For purposes of subsection (b)(2), the term 'harm means a harm that is not inconsequential, immaterial, or unimportant."; and

(6) inserting immediately after "advice to" in subsection (f), as redesignated by paragraph (4), a comma and "and in making its determinations for,".

(b) Presidential Determination.—Section 134 (19 U.S.C. 2154) (relating to prerequisities for offers) is amended by—

(1) striking out "advice concerning such article" in the last sentence thereof the following: "advice and the determination, if any, concerning such article"; and

(2) adding at the end thereof the following new sentences: "Any article with respect to which the Commission makes an affirmative determination under section 131(b)(2) shall be considered to be import sensitive' for purposes of section 101 unless the President determines to override such affirmative determination in the national security interests of the United States and (A) reports in writing the specific reasons for his determination to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and (B) publishes notice of his determination with an explanation of the reasons therefore. The President shall not make any offer with respect to the rate of duty on an import sensitive article.".

(c) Negotiating Authority.—Section 101(b) (19 U.S.C. 101(b)), as amended by section 153 of this Act, is amended by adding at the end thereof the following new paragraph:

"(3) Notwithstanding paragraphs (1) and (2), no proclamation pursuant to subsection (a)(2) of this section shall be made decreasing the rate of duty of on any article which is import sensitive within the meaning of section 134.".

TESTIMONY BY MAX L. MOORE

My name is Max Moore and I am Vice President of Oklahoma Steel and Wire Company, a family-owned manufacturer of wire products in south central Oklahoma. Our main products are supplied to the agricultural and construction industries in the southwestern United States.

Over the past two years, our company has become increasingly frustrated in our efforts to ensure fair treatment under existing international trade relationships.

In January 1984, Bethlehem Steel Company filed a petition on behalf of the domestic steel industry for relief under Section 201 of the Trade Act of 1974. As an alternative to granting relief under Section 201, President Reagan initiated a program of steel export restraint arrangements, which were subsequently negotiated with 18 countries. These arrangements limit imports of carbon and certain alloy steel products.

During the negotiation of the arrangements, the United States Trade Representative ("U.S.T.R.") utilized the description of products included in the Section 201 petition as the basis for determining the product scope of the arrangements. The petition primarily covered products made by Bethlehem Steel, although there was an effort to include other products where obvious import problems existed. As negotiated, the arrangements contained no provisions for addressing import problems that might arise as a result of the omission of certain products.

Wire fence panels and wire reinforcing mesh (the major products of Oklahoma Steel and Wire) were not included in the Section 201 list and thus are not covered under the steel arrangements. Most other carbon steel wire products are covered by the arrangements. This put companies such as ours in a very difficult position, because foreign producers of wire products that are under arrangement limitations have diverted their productive capacity into products such as fence panels and wire mesh where there is no restraint. Thus, the arrangements have only shifted the burden of imports from the large steel mills to the independent wire producers such as Oklahoma Steel and Wire which produce fence panels and mesh. This has happened in particular with Mexico and Venezuela since the arrangements with those countries went into effect in 1985. For example, while wire rod imports from Venezuela decreased over fifteen hundred percent from 1984 to 1986, wire mesh imports increased approximately twelve hundred percent during the same period.

The omission of fence panels and wire mesh from the arrangements was purely an oversight and was not the result of intentional exclusion. This fact is evident from statements made by various Administration officials since the negotiation of the first arrangements. For example, Ambassador Lighthizer stated in testimony before the Committee on Energy and Commerce in March 1985 that the arrangements "cover all steel products except those already under quota as a result of the 1983 Specialty Steel 201 Action." This point was also emphasized at a meeting of government officials from USTR, Commerce, and Customs with the American Iron and Steel Institute in March 1985. At that meeting, industry representatives were assured that there were "no carbon or alloy exemptions" from the product coverage of the six Arrangements negotiated at that point. It is clear that the exclusion of fence panels and wire mesh was accidental. It is also clear that their continued exclusion is unfair and unjustifiable and is adversely affecting companies like mine.

Unfortunately, the loophole in the steel arrangements has not been our only problem in international trade. We have also been prevented from selling our own products in foreign markets because of unfair trade barriers. For example, while facing intense competition from Mexican imports which enter the U.S. duty-free under the Generalized System of Preferences ("GSP"), Oklahoma Steel has at the same time effectively been denied access to the Mexican market due to prohibitive tariffs and other surcharges, which until recently totalled over 45 percent on imports of wire fence panels. These surcharges inflate the price of U.S. panels beyond the competitive level in the Mexican market, precluding entry by U.S. producers and creating a protected home market for Mexican producers free from outside competition, enabling them to sell fence panels into the United States at prices that do not reflect competitive reality.

These inequities prompted us in December 1985 to file a petition under Section 301 of the 1974 Trade Act. We were encouraged to do so by the U.S. Trade Representative's office, as communicated through the staff of Senator Don Nickles of Oklahoma. Despite a clear demonstration of market access denial, we were informed that the petition would be rejected on the grounds that import surcharges of 45 percent were typical across the board in Mexico and therefore could not be considered "unreasonable or unjustifiable" within the meaning of Section 301. While the U.S.T.R. agreed to seek tariff reductions on a bilateral basis with Mexico, those negotiations resulted in a tariff reduction on fence panels to only 25 percent, which still precludes us from selling at competitive prices in the Mexican market.

President Reagan promised on September 23, 1985, that the Administration would be "receptive to petitions from United States firms and individuals that present valid complaints of foreign unfair trade practice." To this end, the President promised to direct Ambassador Yeutter "to take action in those instances of unfair trade that disadvantage American businessmen and workers." Most importantly, the President promised that the Administration will take "tactical measures aimed at eliminating unfair foreign trade practices and opening foreign markets," including if necessary, "the denial or limitation of access to the United States market."

With respect to the wire fence panels, these promises have not been fulfilled. While Mexican imports enjoy duty-free entry into the U.S. market, our company and other U.S. producers remain effectively barred from selling in Mexico because of high tariffs.

Oklahoma Steel and Wire is not requesting protectionistic legislation. Our objectives are simply to achieve reciprocal access to the markets of our competitors and to be treated in the same manner as other domestic steel producers whose interests are being served by the President's Steel Program.

Statement of

Outboard Marine Corporation

OMC manufacturers and sells Johnson and Evinrude outboard motors. OMC is the largest producer of outboards in the world. OMC is export oriented, and exports constitute about one-quarter of our net sales.

Our U.S. operations alone employ over 8,200 people. OMC is headquartered in Illinois and has outboard-related facilities in several states, including Georgia, North Carolina, Tennessee and Florida. In addition, OMC has expanded its marine base through the recent acquisition of several boat companies, with facilities in Texas, Michigan, Missouri, South Carolina, Oregon, and Tennessee.

The world demand for outboard motors is limited in size and competition is intense. The total world demand for outboards is less than 1 million units annually. This compares with demand of 10 million units annually for automobiles in the United States alone. At the same time, over the last 10 years the number of outboard motors manufacturers has about doubled, due to the entry of several major Japanese manufacturers of motor vehicles, including Yamaha, Suzuki and Honda. To meet the challenge, OMC has implemented a major capital investment program that has made our operations among the most efficient and low-cost in the world, without moving out of the United States. Moreover, in order to maintain OMC's strong market position and to preserve OMC's long-standing reputation for world-wide technological leadership in the marine business, we have accelerated the development of new products. More new products have been introduced in the last few years than at any other time in our history.

This has been a highly successful campaign, but OMC continues to face severe difficulties in selling our products overseas. Our Japanese competitors are, for the most part, diversified manufacturers of other products, including motorcycles and automobiles. They can afford to suffer losses in outboard motors for an extended period while they dump into various markets worldwide. OMC, on the other hand, relies primarily on outboard motors for our profitability. We cannot afford sustained losses. In addition, our competitors have the benefit of high prices in their protected home market. With this advantage, Japanese outboard manufacturers have dumped their export products in Europe, Australia, Latin America, Southeast Asia and elsewhere. All of these are important export markets for OMC. In Europe and Australia, where OMC has subsidiaries, antidumping actions were brought against these practices, and the authorities there found substantial Japanese violations under dumping laws that are consistent with the 1979 GATT Antidumping Code. Dumping margins found were as high as 50 percent, injury to the domestic industry caused by dumping was found, and corrective measures were imposed. However, in countries where we have no subsidiaries, OMC has no practical trade law remedies.

We expect that this pattern of injurious dumping will be repeated in the United States. Once our Japanese competitors have carved off our exports to other countries, we are more vulnerable to an onslaught of dumping in the United States. The U.S. is wide open to outboard motor sales. The U.S. duty on outboards fell to zero in January and there are no U.S. non-tariff barriers to imports of outboards.

Markets are often international in scope. In many cases, an exporter may engage in dumping not merely to gain access to a particular national market, but as part of an overall strategy to eliminate competitors worldwide. Many U.S. companies compete worldwide and therefore can be the target of dumping in many markets. The strangulation of U.S. exports injures the domestic industry as surely and severely as dumping in the United States itself. In addition, the fact that certain foreign competitors have already been found to have dumped their products internationally, to the injury of the domestic industries, should be a clear signal to the United States that this pattern of pressing dumping to the point of injury will be repeated here. This is a signal that we cannot afford to ignore.

The U.S. trade laws already address some of the unfair trade practices that injure U.S. export markets. For example, Section 301 has been used to combat export subsidies and other practices of foreign governments that affect U.S. industries primarily in their exports. But dumping by private parties into U.S. export markets has no remedy under existing law.

Last year, during consideration of H.R. 4800, OMC brought these concerns to the attention of Congressman Jenkins, the Ways and Means Trade Subcommittee professional staff and, in testimony, the members of the Trade Subcommittee. The concerns we expressed to Congressman Jenkins and the Subcommittee resulted in the inclusion of the "Effect of Dumping in Third-Country Markets" provision in H.R. 4800/H.R. 3 (Section 134(iv)).

Members of the Ways and Means Committee were concerned that where there has been injurious dumping in other markets, this pattern will be repeated in the U.S. According to the Committee report, they also were concerned about the effects of such dumping on the export opportunities of U.S. firms. Although repeated injurious dumping is one of the worst sorts of unfair trade practices, current U.S. law does not require the ITC to take dumping in other markets into account in antidumping investigations. The Committee concluded that the proper way to deal with this problem was to strengthen the "threat of material injury" standard.

The purpose of Section 134 (iv) of H.R. 4800/H.R. 3 is to allow U.S. industries whose foreign competitors have engaged in a pattern of injurious dumping to obtain relief just as quickly as possible, consistent with U.S. obligations under the GATT Anti-Dumping Code. In approving this provision, the Committee concluded that those who have been caught dumping elsewhere and who are selling at dumped prices in the United States must furnish specific and convincing evidence to the ITC that there is no threat to the U.S. industry. If they fail to do so, the ITC can be expected to draw the obvious inference -- that the foreign producers will repeat their practice of injurious dumping in the United States.

We are encouraged to see a strong recognition of the need to change the U.S. trade laws to deal with the kind of unfair marketing strategies confronting OMC. We believe that this provision should remain part of the comprehensive trade bill which is reported by the Trade Subcommittee to the full Ways and Means Committee, in order to help combat a problem that does not now have a remedy.

STATEMENT OF RANDOLPH J. STAYIN
ON BEHALF OF
THE SPECIAL COMMITTEE FOR WORKPLACE PRODUCT LIABILITY REFORM
BEFORE THE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES
FEBRUARY 27, 1987

I am Randolph J. Stayin, a partner in the law firm of Taft, Stettinius & Hollister, and I am submitting this statement on behalf of the Special Committee for Workplace Product Liability Reform. I have been asked by Congressman Hal Daub to testify before this Committee regarding the impact of the U.S. product liability system on the competitive position of U.S. manufacturers in the marketplace. While product liability legislation may fall primarily within the jurisdiction of the Commerce Committee, it is relevent to the competitiveness issue which is of vital concern to this Committee. As you know, product liability reform has been recommended by the President as part of his Competitiveness Initiative.

In November, 1984, I completed an International Study of Product Liability Costs and Systems For Five Domestic Machinery Industries ("Study"). The Study was conducted in cooperation with the Packaging Machinery Manufacturers Institute, the Food Processing Machinery and Supplies Association, the Pulp and Paper Machinery Manufacturers Association, and the Wire Machinery Builders Association. During our research, we conducted confidential interviews with 250 persons, including legal scholars, product liability litigation specialists, insurance experts (consultants, underwriters, brokers, claims management firms, and loss control engineers), manufacturing personnel (presidents and chief executive officers, quality control managers, sales managers, insurance managers and financial managers) and trade association personnel who have been involved in product liability issues. While the Study also examined product liability experience in Japan, my firm focussed on product liability in the United States and western European countries. I will discuss briefly some of our findings with respect to the unique product liability problems of the subject industries, and then concentrate on the competitive advantage provided to foreign machinery manufacturers as a result of the impact of the U.S. product liability system on their U.S. counterparts.

I. The Workplace Product Liability Problem

The workplace product liability problem, the focus of the Study, is exacerbated by its interaction with state workers compensation laws. Under present law, almost all state worker's compensation statutes (and/or their court interpretation) bar recovery of indemnification from the employer by a workplace product manufacturer, no matter how negligent the employer may have been in failing properly to guard and maintain that product or in making the product unsafe as a result of altering and modifying the product or in failing to instruct and monitor his employees on how to use it. This inequity is further compounded by the fact that, in most jurisdictions, the employer and/or his worker's compensation insurance carrier obtains a subrogation lien from third party recoveries even though the employer may have caused or contributed to the cause of the employee's injury. The Insurance Services Office (I.S.O.) Study reveals that about 56% of workplace product liability bodily injury payments involve cases where the defendant manufacturer would have impleaded the employer based on his fault but for the worker's compensation exclusivity rule. Thus, manufacturers of workplace products are, in effect, paying the entire cost of many industrial accidents, while employer-users of the products may be completely relieved of financial responsibility despite the fact that they may have been in a better position (or in the only position) to prevent the accident from occurring.

The worker's compensation shield decreases an employer's incentive to acquire safer machinery and generally to provide a safe workplace. Some incentive remains since worker's compensation costs will go down where there are fewer injuries. However, this is offset by the subrogation recovery from the employee's product liability award. Even if the employer is at fault in causing or contributing to the cause of the employee's injury, he may still recover through his subrogation lien all payments made pursuant to the employee's worker's compensation claim. Product related subrogation recoveries amounted to $40.2 million in 1981.

The incentives, therefore, do not reflect the fact that it is generally the employer who is knowledgable about and dictates the product use/misuse, then transmits the instructions and warnings, controls the environment in which the product is used, and frequently alters the machinery. This system provides an incentive to the employer to encourage his injured employee to bring a product liability suit against a machinery manufacturer so that even his limited financial exposure can be passed on through subrogation. "Thus, both employees' expectations of a safe workplace and manufacturers' expectations that products will be used safely in the workplace may be frustrated by an employer's lack of incentive to insure that a product is used in a safe manner."[1] The system places the primary incentive for workplace safety on the wrong party and works in opposition to the injury prevention policy of product liability law.

II. Product Liability Insurance -- A New Crisis

During the previous "product liability insurance crisis" (1973 through 1978), the machinery manufacturers which were the subject of this Study experienced increases in premiums ranging from 500 to 5,000 percent. Many small- and medium-sized businesses found themselves in a position of not being able to acquire product liability insurance coverage at all or were faced with the unfortunate reality that even if coverage was available, it was unaffordable. The potential impact of such a crisis on our society was described as follows:

> It has grave societal implications. The real risk that small or moderate business will liquidate or become bankrupt imposes enormous costs upon society via tax losses, increased welfare payments, and dislocation of employees. The resultant anticompetitive conditions caused by liquidating businesses thwart the intent of the antitrust laws. Imposition of an unreasonable form of product liability can stifle the drive of small businesses towards invention and development of new products. Unpredicatable financial risks, in the form of ever increasing liability, impede growth and investment.[2]

In the period of 1979 through 1983, the product liability insurance problem stabilized and capacity expanded. This was due in part to a shrinkage in demand, as many companies were taking high deductibles in order to reduce premiums and an increase in supply, as foreign insurers, and reinsurers lured by high product liability premiums added to the capacity in the U.S. insurance market. Furthermore, with interest rates climbing, insurers believed they could make substantial profits on investment of premiums and reserves that would more than offset any losses on product liability policies. With the increase in capacity, insurers became more competitive and product liability rates decreased. Some insurers characterize this period as involving a price war which resulted in losses that had gotten so far out of line with premiums, that product liability rates would have to increase. Premiums had not kept pace with the increased losses on product liability coverage. Many companies were reporting loss ratios of 150 percent and more. This means that for every $1.00 in premiums received, the insurer was losing $1.50 and that product liability losses were being supported by principle and interest on investment of reserves. The product liability combined loss ratios for most insurance carriers were very poor. The number of underwriters willing to underwrite product liability began to shrink.

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[1] Carpenter, Product Liability -- An Analysis Of The Law Concerning Design And Warning Defects In Workplace Products, 33 S.C.L. Rev. 273, 278 (1981).

[2] Hoenig, Products Liability Problems and Proposed Reforms, 651 Ins. L.J. 213, 256 (1977).

As a result of this shrinkage in capacity, the premiums in the entire insurance market turned upward, especially in the product liability line. Reinsurers made dramatic increases in rates to insurance companies due to large losses that they had incurred. This, in turn, imposed an additional pressure on primary insurers to increase their rates. During the summer of 1984, members of the Woodworking Machinery Distributors Association (WMDA) received increases of 500 percent to 1,000 percent with only five days notice prior to expiration of their policies. Members of the Food Processing Machinery and Supplies Association, the Machinery Dealers National Association, and the Process Equipment Manufacturers Association experienced up to 500 percent increases; the Packaging Machinery Manufacturers Institute members experienced up to 700 percent increases. Further substantial increases occurred in 1985 and 1986, regardless of each company's loss experience and the risk of the particular product involved. For example, it is estimated that the members of the Machinery Dealers National Association experienced 1000 to 1500 percent increases since 1984. When coupled with larger deductibles, less coverage, and forced shifts from occurance to claims-made policies, the cost of product liability insurance for that group increased as much as 30 times.

The preliminary results of the National Machine Tool Builders' Association Annual Product Liability Survey (dated February 2, 1987, and based on 92 returns) indicate that 23 percent of its members have no product liability insurance and that for those fortunate enough to find coverage, insurance premiums have risen by 55 percent since last year and have tripled since 1985. 1986 levels exceeded the peak of the mid-1970s insurance crisis; 1987 is even worse with premiums continuing to rise and the number of companies "going bare" exceeding the 1979 levels. The average premium is $235,700 (up 55 percent from $151,900 in 1986 and up 299 percent from $59,100 in 1985). Thirty-four percent have large deductibles or self-retentions averaging $81,900. One respondent in four has no insurance at all (mostly because they found their carriers' proposals to be too expensive, although some could not even get a proposal); and 43 percent of those companies with annual sales in excess of $2 1/2 million have no umbrella policy to protect against catastrophic claims.

Companies in the industries studied are now experiencing a product liability insurance crisis at least as severe as that of the 1970s. In the last three years this problem has been manifested in severe rate increases, policy restrictions, and cancellations of product liability coverage.

III. Transaction Costs

One reason for the sharp rise in insurance rates is the presence of transaction costs in product liability suits that are extremely high and appear to be out of proportion to the amounts recovered. For every dollar an injured plaintiff received, insurers incurred an average of 42 cents of expenses defending claims.[3] Attorneys' expenses constituted approximately 85 percent of the total of allocated loss adjustment expenses. Similarly, for every dollar an injured plaintiff received, the plaintiff paid an attorney's contingent fee averaging 33 cents. Thus, the plaintiff received about 67 cents out of every dollar of loss recovery. When one adds the average defense cost to the average contingent fee, it appears that for every 67 cents that an injured party received from product liability litigation, the transaction costs expended were 75 cents.[4] A 1983 Rand Corporation Study found that for every $59 paid to persons injured by a product, $99 are paid for legal costs of the parties to the product liability suit.[5] These studies appear to demonstrate that our product liability system incurs costs to process claims that are greater than what it pays out in compensation.

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[3] Insurance Services Office Product Liability Closed Claim Survey: A Technical Analysis of Survey Results, 11 (1977).

[4] See S. Rep. No. 476, 98th Cong., 2d Sess. 7 (1984).

[5] Id., see Kakalik, Ebener, Felsteiner and Shanley, Costs of Asbestos Litigation (1983).

IV. Other Impacts On Domestic Industries Studied

The product liability system in the United States has had a major impact on domestic manufacturers of industrial machinery. In addition to the high cost of product liability insurance, the great expense incurred in defending lawsuits and the substantial investment in risk prevention and minimization, product liability has become so intimidating to the industries studied that 13.5 percent of the companies had dropped product lines and 11.5 percent had decided against development of a particular new product due to these concerns. In a 1986 survey of process equipment manufacturers, 19 percent of the respondents reported that they had dropped some existing product lines because the product liability risks were too high, and 16 percent reported that they had considered developing a new product, but decided against development due to product liability concerns. These domestic manufacturers are removing highly vulnerable, but socially and economically necessary industrial products from the U.S. market, leaving the arena to their foreign competitors to fill the void. This reduction in competition may lead to higher prices for the foreign machines and potential disruption in production of, and the competitiveness of, the U.S. purchaser of the foreign machine who may be left subject to the whims of foreign suppliers. The reluctance to develop and introduce new products may lead to further erosion of the United States' competitive edge in technology.

In the textile machinery industry, product liability has taken its toll, forcing companies to drop lines or to go out of business. After 100 years of manufacturing rotary textile machines, Proctor & Schwarz, Inc. dropped its entire line of rotary textile machinery due to economic factors, including mounting costs (direct and indirect) of product liability. "Since that time, they continued to be faced with the ever-increasing costs of defending lawsuits, some of which arise out of accidents involving machines that are 70 years old and others involving cases where the accident occurred on machines that were not manufacturered by Proctor." The theory of risk spreading as a philosophic basis for strict liability does not work for companies like Proctor because the cost of product liability cannot be passed on to consumers of the product when the product is no longer being manufactured by the company. The James Hunter Machine Company, Inc. ended its 136 years of manufacturing textile machinery by filing Chapter 11 bankruptcy, "not so much because business conditions are poor, but because of a little understood, yet all too familiar concern of American manufacturers -- product liability."6/ Davis and Furber Machine Company began manufacturing textile machinery in the U.S. in 1830 and went out of business in 1982. "The annual cost of product liability made manufacturing new textile machinery impossible.... At one point Davis and Furber was one of the largest textile machinery manufacturers in the world. It no longer exists."7/ U.S. textile manufacturers still need the rotary textile machine that these three former competitors had supplied in order to continue to manufacture U.S. made textiles. The lion's share of the U.S. market for these machines is now controlled by foreign competitors.

V. Competitive Impact of U.S. Product Liability System On International Trade

During the past decade, capital goods manufacturers have complained repeatedly about the advantage enjoyed by their foreign competitors as a result of the U.S. product liability system. Our Study concluded that the U.S. product liability system has the effect of providing foreign capital machinery manufacturers with a competitive edge over their domestic counterparts. Differences between the U.S. product liability system and the product liability systems of the Western European countries and Japan result in higher product liability costs to U.S. manufacturers that are necessarily included as part of the overhead in determining the unit price of U.S. machinery.

6/ Id.

7/ Id.

Although a product liability action may be brought in Europe and Japan against a manufacturer of workplace machinery, such actions are virtually nonexistent. This is primarily due to an approach to workplace product liability in these countries that is quite different from that in the United States. A worker injured in the countries studied is compensated by worker's compensation, a social security system or the employee's company. An injured employee typically believes that he has been fully compensated as a result of receiving his social security or worker's compensation payments and thus does not seriously consider pursuing the manufacturer of the machine upon which he was injured. Moreover, those countries rely primarily on the employer for workplace safety.

If the foreign employee that was injured did pursue the available product liability remedies, he could only hope for compensation for pain and suffering since foreign courts consider worker's compensation or social security payments as full compensation for all of his other damages. Although the concept of pain and suffering and the flexibility accorded U.S. juries in this respect contributes to high product liability awards in the U.S., pain and suffering has gained much more limited recognition in the foreign countries studied. Awards for pain and suffering in some European countries are specifically limited by statute. Moreover, the Europeans seem to place a lower value on intangible, general damages like pain and suffering.

The use of juries in civil trials is virtually unknown in Europe and Japan. Among Western European countries, the jury system operates in civil cases only in Ireland, where it has been found that, on average, damages awarded are four to six times higher than in England (where damages are awarded by judges). This is despite the fact that England has a considerably higher standard of living.

There are further disincentives in the European and Japanese systems that discourage injured employees from pursuing a product liability action against a manufacturer. Unlike in the United States, contingent fees for lawyers are illegal. Under the United States contingent fee system, plaintiffs can avoid the upfront costs of financing litigation. In the countries studied, the plaintiff will not only be required to pay for his own attorney's fees, but if he loses his product liability action, he may have to pay the legal fees and court costs of the defendant. Technical expertise and specialization in product liability among American plaintiffs' lawyers is not developed in Europe. Thus, it is much more difficult for European and Japanese lawyers to maintain successful product liability actions, especially in cases involving the very technical elements of design defect. Damage awards, litigation and settlement costs are much higher in the United States. These account for the substantial difference in premiums between U.S. and European coverage. Further, punitive damages are not available in these foreign jurisdictions and, therefore, the plaintiff does not have the windfall potentially available to the United States litigant. Pre-trial discovery in the investigated countries is much more limited than in the United States and class action suits are not allowed. Product safety, accident, and defect data that is widely available in the United States, is much more difficult to obtain in such countries.

All of these factors create a substantial disincentive for an injured worker to bring a product liability action against a manufacturer of a workplace product. In addition, there is also the overriding predisposition among Europeans and Japanese against litigation, a phenomenon in stark contrast to the high level of litigation consciousness among the American population. In Japan, the injured employee feels he has dishonored himself and would consider it improper to attempt to hold others responsible for his injury. Bringing a lawsuit would cause further "loss of face".

Due to these systemic disincentives and reluctance to litigate, the product liability remedies for workplace injuries exist in theory, but are not pursued. For all of these reasons, our Study found that foreign competitors have product liability insurance costs 20 to 100 times lower than those of their U.S. competitors in their respective home markets and do not have the burden of all of the other product liability related costs incurred by U.S. manufacturers.

In addition to the high cost of product liability insurance, U.S. manufacturers also incur costs related to product liability claims, such as: deductible sums under the insurance policy; awards above the policy limits;

time and costs of company personnel spent in accident investigations, document assembly and production, interrogatory responses, court testimony, etc.; and product recall, field retrofit or replacement expense. During our visits to manufacturing plants in the U.S., we were impressed by the amount of effort and degree of care expended by manufacturers in order to assure the safety of their product. In addition to those costs, however, they incur further continuous costs for preventative measures to reduce product liability risk. Questionnaire responses received from companies in the subject industries reveal that these risk prevention costs, exclusive of product liability insurance, range from $5,000 to $80,000 per year. Other industries have experienced similar costs. One machine tool manufacturer reported that his product liability costs per machine increased from $200 per machine in 1970 to $11,000 per machine in 1982. In 1981, its product liability insurance costs were 3.1 percent of sales.[8/] The Sporting Goods Manufacturers Association has indicated that its product liability costs in 1982 amounted to 4.2 percent of sales compared to 0.5 percent of sales for its Japanese competitors.[9/]

A spokesman for the National Machine Tool Builders Association, whose members are experiencing import penetration of the United States market in excess of 40 percent, made the following observation:

> Part of the foreign machine tool manufacturer's cost is product liability insurance. As with any other cost, it is factored into the price of their respective products. Because the United States is only a partial market for them, their product liability costs are substantially less than those of domestic machine tool manufacturers. We still sell the bulk of our products here and must face exposure to product liability with respect to a substantial number of our products.
>
> Perhaps more importantly, our product liability insurance costs are affected by our older products. Under product liability law today in the majority of states, we are potentially responsible literally "for ever" for products.... While we usually win these [overage product liability] suits, they result in high legal and transaction cost.... Foreign machine tool manufacturers, on the other hand, do not have these older products in this country. Therefore their product liability insurance costs often are substantially less than ours. With total instability in our law with regard to older products, we, in effect, have a major stumbling cost block with foreign competition....[10/]

The majority of sales by the manufacturers in the subject industries are made to customers located within the United States. This is because of their dominance over the past 100 years of the U.S. market, the size of the U.S. market, and difficulties inherent in exporting. Generally speaking, U.S. manufacturers dominated the domestic capital goods market until the last ten years. They then began to experience a severe erosion in market share brought on by foreign competitors that had begun to catch up for a number of reasons, including technological advances and price competition.

While foreign manufacturers have achieved substantial penetration of the U.S. market in recent years, the volume of their products in the U.S. market is far less than in their own domestic markets and the world market

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[8/] Testimony of Herbert W. Goetz, Product Safety Manager of Cincinnati, Inc. Before the Subcommittee on the Consumer of the Senate Committee on Commerce, Science and Transportation (March 12, 1982).

[9/] See letter from Howard J. Brunz, President, Sporting Goods Manufacturers Association, to the President of the United States 1 (April 23, 1982).

[10/] Letter from James H. Mack, Public Affairs Director, National Machine Tool Builders Association, to Jim J. Tozzi, Deputy Director of Information and Regulatory Affairs, Office of Management and Budget, (June 10, 1982).

generally. Therefore, the foreign manufacturers do not have the high level of exposure, as a percentage of sales, to U.S. product liability that their U.S. competitors must bear.

Furthermore, U.S. manufacturers are plagued by the long tail of potential liability that accompanies machines that were sold and have been operating in the United States for 50 years or more. Primary concerns expressed by manufacturers in the studied industries related to product liability experiences with these older products and to the fear of unending future liability for these products. These older products do not benefit from more recently developed safety devices and, in fact, were built at a time when the manufacturers had never even heard of the concept of product liability or the accompanying emphasis on "human factors engineering." These machines have often passed through many different users and have been modified or altered by the different owners to suit their purposes. These problems are compounded by the difficulty in locating these older machines and the resistence of their owners to pay for, or accept, costly safety improvements.

In contrast, there are very few older products of foreign origin in the United States. Their newer, foreign products have been engineered with modern safety features and, therefore, are much less likely to cause an injury. The newer product is more likely to still be in use by the original purchaser and, therefore, easier to locate for purposes of recommending safety improvements. As a result of these factors, the foreign manufacturer faces fewer lawsuits, lower product liability overhead, and lower product liability insurance costs for those products sold in the United States.

The United States manufacturer incurs the higher cost of U.S. product liability for a higher percentage of its products, thus increasing the total unit cost for U.S. machines as compared to foreign machines. The unending exposure for older machinery further increases this overhead burden as compared to the foreign manufacturers. Insurers establish product liability rates on an individual company and product basis, looking closely at loss history and the breadth of potential exposure. The number of products that are exposed to product liability in the United States and prospective liability for overage products will result in a higher product liability insurance rate than that which would be charged to foreign manufacturers for the products they are selling in the United States. While foreign manufacturers will have one product liability insurance rate for the United States (and possibly Canada) and another for the rest of the world, even the coverage for the U.S. sales will cost less in comparison to that of their U.S. competitors. The rate will be lower due to the lower risk of their newer machines and the absence of the long tail of liability. The overall premium will be less due to the lower volume of sales in the United States market. Finally, the U.S. rate can be averaged in with the lower overhead created by the "other than U.S." rate, thus allowing the foreign manufacturer even more flexibility in pricing its units sold in the U.S.

Many of the U.S. companies interviewed did not purchase separate policies for United States coverage and for foreign coverage. These companies did not experience a reduction in premium to reflect sales to the export market. Some companies had purchased separate coverage for exports at a lower rate than for the U.S. coverage. However, even those companies that separately insure for foreign coverage incur an insurance cost element greater than that of their foreign competitors' insurance costs abroad. This is due to the fact that even where an injury occurred abroad, there is always a possiblity of being sued in the United States.[11]

Product liability insurance rates set for foreign machines coming into the United States also reflect the difficulty of bringing suit and enforcing a judgment against the foreign manufacturer. During an interview, a U.S. insurer stated that, unless the foreign manufacturer has an American operation, his experience indicates that pursuing the foreign manufacturer in a product liability suit would be fruitless. This assumption is taken into account in the underwriting considerations about a U.S. manufacturer who uses imported components. Unless the foreign manufacturer has an office, plant, agent, or certain other minimum contacts with the jurisdiction of the U.S. court involved, it may be difficult to assert jurisdiction over the foreign manufacturer. Service of process and discovery are complicated by international conventions requiring translation of the pleadings into the foreign language and compliance with the procedural rules and public policy of the foreign jurisdiction. Unless the foreign manufacturer has assets in the United States that can be identified by the plaintiff, a successful plaintiff will then be faced with the difficulty of enforcing his judgment in the foreign country. There are no international conventions which provide for this procedure. At best it is difficult, and it is often impossible to execute that judgment against the assets of the foreign manufacturer in its own country. Britain has resisted efforts of the United States to negotiate an enforcement of judgments treaty in order to avoid what it considers to be excessive product liability awards. Thus the successful plaintiff will then have only the hope that he will somehow be able to identify assets of the defendant that may enter the U.S. in the future, a difficult prospect at best.

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[11] "Product Liability and International Trade and Politics", a paper presented by Frank A. Orbin, III, International Counsel, Armstrong World Industries, to a product liability seminar sponsored by the National Legal Center for the Public Interest 3-5 (April 21, 1982).

With these handicaps and the great expense in time and money that a plaintiff's attorney would have to incur in order to proceed against such a foreign manufacturer, it is highly unlikely that a frivolous suit or a case with questionable damages would be initiated. Therefore, the foreign manufacturers will only face product liability actions where the case for liability is strong and the potential damages are substantial. Our interviews revealed that a great number of the product liability suits brought against U.S. manufacturers are considered by them to be tenuous at best and many are clearly frivolous. Nevertheless, these actions still involve a great deal of expense for the manufacturer to extricate himself from the proceeding. For example, a number of manufacturers interviewed described suits against them for injuries caused by machines that they had not manufactured. One company explained that it cost $13,000 in one case and $18,000 in another to extricate itself by way of summary judgment from such a suit. If U.S. plaintiffs faced the same procedural difficulties in pursuing domestic manufacturers that are involved in cases against foreign manufacturers, there would be a substantial reduction of product liability actions brought against them and, therefore, reduced insurance costs and other overhead.

On the other hand, foreign manufacturers and insurers are generally appalled by the increasing impact on their operations of the American product liability explosion and are even offended by liability actions against them in the United States which they view as the imposition of our socioeconomic values upon them. They are further confused by the vagueness of our product liability laws and their variance in the 50 different states. Many are especially appalled by punitive damages, which they consider penal in nature and only to be imposed in the form of fines and other sanctions, not as rewards to private litigants. They believe that compensation should vary not according to degree of fault but according to degree of injury and loss.

Some Europeans suggested that the U.S. product liability system amounts to a non-tariff trade barrier. They asserted that the high cost of product liability insurance and the threat of outrageous jury awards discourage some European competitors from entering the United States market. With the product liability insurance capacity in Europe beginning to shrink, it is becoming more difficult for foreign firms (especially in France) to acquire coverage for U.S. exports. Thus, some firms have decided to proceed with sales in the United States without product liability insurance on the theory of "catch me if you can." Indeed, it has been reported that 60 to 70 percent of French companies do not insure for product liability. This, of course, gives them an additional competitive advantage. It is particularly difficult for a small company with a small potential sales volume to justify the cost necessary to insure its sales against product liability in the U.S. market. In fact, the U.S. product liability system is not a trade barrier because U.S. firms, which are competing against the foreign manufacturers, are paying even higher product liability costs.

The U.S. product liability system has had effects on international trade beyond competition in the sales of machinery. Some foreign investors have decided not to acquire U.S. companies because of the long tail of product liability exposure that comes with successor liability in the United States.

Some foreign manufacturers that considered opening a plant in the United States have decided against it. An example was cited of one company that had actually closed several plants in the United States in order to escape further exposure to U.S. product liability laws. This, of course, has a negative impact on our economy because of a loss of jobs from the closing of the plants and the potential jobs that could have been created by the opening of other plants. Such decisions are being made on the basis of actual knowledge of exposure or due to the inability to predict or have any certainty as to the potential exposure.

In sum, it appears that foreign manufacturers of capital machinery often enjoy a competitive advantage over the subject U.S. industries' manufacturers due to the difference in product liability costs. The full extent of this advantage is difficult to calculate and varies with the particular circumstances of each competitor.

VI. The Need For Passage Of Federal Product Liability Reform Legislation

While this Study focused on identification of approaches to reducing insurance costs and developing risk prevention measures in order to ameliorate the product liability problem, it cannot be ignored that the single most effective measure for reducing product liability costs would be the enactment of product liability reform legislation by Congress. The Federal Interagency Task Force on Product Liability concluded that a major cause of the product liability problem is the uncertainty in the tort litigation system.[12/] This conclusion was confirmed by our interviews with manufacturers and insurers in Europe and the U.S. The patchwork nature of U.S. product liability law and the attendant unpredictability of responsibility has resulted in higher than necessary insurance costs. The varying product liability legal standards in the 50 different states and the District of Columbia must be replaced by national standards to be applied uniformly by the courts throughout the country.

It is very difficult for manufacturers and insurers to plan for the amount of insurance needed or to predict the theory of recovery likely to be used since products liability laws differ significantly from state to state. These laws determine the probability and the size of the losses involved. Also of significance are the various statutes of limitations among the states, the various defenses available, and the differing forms of damages. Insurers are more hesitant to become involved in products liability risks because of these factors and also because of a trend toward greater liability and increased compensation.

Manufacturers of durable products such as machines present particular problems for their insurers who must set current premiums for goods that may be outdated yet still in use. Liability for machines that often cannot even be located exacerbates the difficulties involved in estimating future losses. These indefinite liabilities gave rise to severe premium increases for capital goods manufacturers. "In 1976, these uncertainties contributed to liability premium increases of over one thousand percent.... To the extent there is a crisis in products liability insurance, it has been caused more by increasing uncertainty about future suits and settlements than by known increases in claims costs."[13/] Our research shows that these uncertainties contributed to increased premiums in the 1970's among the subject industries by 500 percent to 5000 percent. We believe these uncertainties helped cause the sharp increases in premiums for these industries in the last three years.

We support the majority view of strict liability in manufacturing and express warranty cases and a fault-based standard in design defect and failure to warn cases. Furthermore, a product should not be considered unreasonably dangerous in design if a means to eliminate the danger was not within the practical technological feasibility at the time of manufacture and the

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[12/] U.S. Dept. of Commerce, Interagency Task Force on Product Liability, Final Report at I-20, I-26 (May 1977).

[13/] Note, Limiting Liability: Products Liability and a Statute of Repose, 32 Baylor L. Rev. 137, 142 (1980).

usefulness of the product to the public outweighed the likelihood and probable seriousness of the harm. Manufacturers should be responsible for their own conduct and not for injuries caused by misuse or alteration of the product. This is in accordance with the principle that incentives for prevention should be placed on those best able to implement that goal.

Such legislation should reduce the inequity that arises out of the interaction between the worker's compensation and product liability systems in the United States. While the employer may retain the worker's compensation shield to any further liability to the employee, subrogation must be eliminated and the amount of worker's compensation the plaintiff will receive should be deducted from any amount that a court determines the manufacturer must pay. This reduction does not affect the amount the plaintiff currently receives, but rather takes the place of the employer's subrogation lien which currently is being deducted from the recovery of the plaintiff. The Alliance of American Insurer's 1979 survey found that worker's compensation subrogation was involved in 68.5 percent of job-related accidents. This provision will reduce transaction costs attendant to subrogation.

In the case of capital goods, we support a statute of repose of 10 years after delivery to the first buyer or lessee. A ten year statute of repose is realistically consistent with the useful safe life of a machine and it will be helpful with respect to long tail liability created by over-aged machines. Our Study reveals that of the 55 companies responding to our questionnaire, 11.8 percent have been producing machinery for over 100 years and that the companies responding had been producing machinery for an average of 47 years.

Evidence of post-manufacture corrective measures taken by the manufacturer after an injury has occurred should not be admissible in court to prove liability. This would overrule the minority position allowing such evidence to be presented to a jury and would preserve the incentive for manufacturers to improve their products and warn users of potential hazards in products already in existence in the field. Interviews with company personnel reveal that a fear of such evidence reaching a jury has caused a reluctance on the part of some manufacturers to take post-manufacture corrective measures.

Finally, we support punitive damage reform. Since injured parties are fully compensated by compensatory damages for every element of their injuries, there is no need to provide the windfall of punitive damages as well. As we have pointed out, punitive damages are illegal in Europe and Japan.

By specifying criteria for determining responsibility and limitations on responsibility, federal product liability legislation would reduce uncertainty and ambiguity in the product liability field. The predictability of manufacturer's responsibility will result in lowered product liability insurance premiums. Defense costs will be reduced because there will be no need to use local counsel to research the law relevant to the case in the particular jurisdiction involved and any conflict of laws issues that may arise as a result of the interstate nature of product liability cases. Our research indicates this could result in an upfront savings of $3,000 to $5,000. Predictability will also assist in dealing with the problem of successor liability and the continuation of businesses that are failing as a result of product liability burdens. The elimination of subrogation will increase the incentive of employers to maintain a safe workplace. This would bring our product liability system closer to the European approach to the workplace problem where an incentive and responsibility is placed upon the party best able to create safety and prevent injuries in the workplace. The transaction costs involved in the pursuit of subrogation would also be eliminated. A reduction in transaction costs would also result because meritorious suits will be settled more quickly due to the certainty of legal standards applicable to the case. While the plaintiff's rights are maintained, manufacturers will benefit through lower insurance and transaction costs as well as the ability to predict their responsibility and act accordingly in producing a safer product. Consumers and buyers of products will benefit as lower product liability costs will be passed on in the form of lower prices for products. For all of these reasons, we urge your support of federal product liability legislation and ask that it be included in the omnibus trade legislation ultimately adopted by Congress.

Statement
THE HON. WILLIAM M. THOMAS
For the Record
Ways and Means Subcommittee on Trade
March 5, 1987

I appreciate this opportunity to comment on "fast track" import relief procedures. This Subcommittee and its chairman in particular have been helpful over the years in making sure perishable crops' unique natures are recognized under our trade laws. That aid is much appreciated. Your efforts to provide fast track relief under the Caribbean Basin Economic Recovery Act, the U.S.-Israel Free Trade Area and now the omnibus trade legislation before us are noteworthy.

I especially appreciate your efforts to provide a generic "fast track" relief mechanism. Our existing trade laws can take too long to provide effective aid to producers of perishable agriculture products. The "escape clause" action today can mean up to nine months will pass before relief is provided. It is a process geared toward manufacturing industries. For industries with perishable goods, that means an entire marketing season is lost. We need something faster than that.

At the same time, we have to strive for a GATT-consistent process. The United States is currently engaged in talks with other countries to improve the GATT. Ambassador Yeutter has made it clear he wants agricultural trade, especially farm export subsidies, to be addressed in these discussions. If we develop a new process, we need one demonstrating our commitment to a fair, effective international trading regime. The alternative is one we know all too well. Our adoption of a process contrary to GATT would encourage other countries to adopt processes that are even more objectionable, setting back our efforts to create a strong trading process.

I have heard some complaints about the "fast-track" process we developed last year I hope everyone will consider. The complaints are not about the structure, although some farm groups may contend even the H.R. 3 process takes too long. The complaints are practical in nature. In essence, the concern is that H.R. 3's process is so swift that other nations might claim the relief mechanism will never produce sufficient information to meet the injury and causation standards of Article XIX of the General Agreement on Tariffs and Trade.

As well, the shorter the period for gathering information, the more we must rely on import, price and other readily-available data. Any decision made on that basis comes close to the kind of reference-price mechanisms that American agriculture so strongly opposes when they are employed by other countries. We certainly do not want to sanction the use of such devices and I am sure we do not want farmers to suffer the effects of retaliation if our new system is used.

The proposal I have attached to my statement was developed with these factors in mind. It could potentially provide relief faster than today's process. It is also designed to comply with the General Agreement on Tariffs and Trade. It is different from some of the ideas I have discussed with this Subcommittee in the past and I want to explain some of its provisions.

This proposal allows petitioners to get relief under the "escape clause" process in a minimum of 137 days. Once the Trade Representative had decided an article is perishable and ordered ITC to monitor imports, a petitioner could request "escape clause" relief under an accelerated process. The key to the proposal is ITC 's role: ITC would have to monitor the market and industry for a minimum of 90 days before the "escape clause" action could be filed. The proposal grafts on to the escape clause processes we already use, allowing petitioners to get a quick decision from the International Trade Commission. It also gives petitioners some flexibility in deciding when to file. Monitoring could be done for up to two years, making it possible for petitioners and the ITC to assess conditions in light of current information.

Perhaps most important, my proposal tries to provide the International Trade Commission with sufficient time to make a high-quality decision on the basis of a well-developed record.

The initial decision about eligibility for fast track relief under my proposal is made by the Trade Representative. Instead of arbitrary judgments about the kinds of crops eligible for help, USTR would have guidelines to apply. Previous legislative and administrative determinations, such as the list of articles provided under the U.S.-Israel free trade area, shelf life, marketing season length and other factors denoting perishability would be taken into account. None of these factors would be treated as dispositive, although I believe USTR should give them great weight. This is particularly true of items on the Caribbean Basin and free trade area lists, which Congress has clearly identified as perishable and which I believe USTR should treat as perishable unless a satisfactory explanation to the contrary can be provided.

My proposal also requires petitioners seeking monitoring to show that they are experiencing or are threatened with harm due to imports. Simply listing perishable crops is not enough to decide whether the International Trade Commission should expend resources on monitoring. Some industries will clearly need watching. To guide USTR in the selection of those industries, my proposal employs the test H.R. 3 employs for the Secretary of Agriculture's decisions on recommending emergency relief.

My proposal also contains a provision allowing petitioners to ask the ITC for what comes close to being a declaratory judgement. This provision allows petitioners to ask ITC to determine whether, on the basis of information obtained, it is reasonably likely that relief would be recommended. If ITC concludes relief was unlikely to be recommended, the Commission would have to explain why.

The point of this provision is to provide farm industries with some idea of whether they are wasting their time pursuing a 201 case or whether there are deficiencies in the data supporting their case that can be rectified. This proposal has a useful purpose. We know these cases are expensive and that petitioners might chose to cut their losses if the pursuit of relief was clearly going to be fruitless. We also know that specialty crop industries have a hard time gathering data and a preliminary indication of their position might make it easier for them to identify the kind of information they need to establish their need for help.

For example, an industry might be informed that its case did not show evidence of harm insofar as few responses to ITC questionnaires had been received. The industry could use that finding to concentrate on getting its people to respond. For more concentrated industries, gathering data may not be much trouble. Specialty crops are different. For example, there are 1,000 olive growers in California and 6,850 avocado growers. The report called for in my proposal could focus an industry's attention on getting a particular type of information from these people, something that both the industry and ITC could find useful.

I am sure the Subcommittee's members will recognize a number of similarities between my proposal and that of the Administration. To a degree, that is not surprising; I have been discussing perishable products relief with the Administration for well over a year and I have tried to address concerns those people have raised. Still, I am pleased to see that we are so close to an agreement. I am continuing to discuss fast track relief mechanisms with the Administration and hope to bring a complete agreement before the Ways and Means Committee before work on this year's trade bill is concluded.

While differences in the structure of our proposals seem capable of resolution, I am not satisfied with portions of the Administration bill. These are areas I am trying to address and ones I wish to discuss so that my objectives are clear.

First, I am not in agreement with the Administration's lack of a definition of "perishable". I strongly believe Congress has an obligation to direct the executive branch and independent agencies to consider certain kinds of products as perishable. Too often, Congress authorizes actions in vague terms and then complains about the results we see.

The Administration's description of perishable products is a case in point. It suggests that only industries that are exposed to injury because their products rapidly become "inedible" are to be considered perishable and thus eligible for monitoring. A strict interpretation of this guideline would leave products with shelf lives enhanced because of cold storage techniques without access to the new procedure. If products can be stored for a limited time, they should still be subject to monitoring if the industry risks injury.

It is also important to note that some processed products may compete with fresh products. My proposal would encourage USTR to consider such relationships in deciding whether to order monitoring. To the degree market relationships expose fresh products to competition from processed goods, a fast-track mechanism should take that into account.

If we want the executive branch to address these issues when monitoring decisions are made, the statute or legislative history should clearly say so. Guidance has to be provided, both for the executive branch's benefit and for the industries we want to use this new process.

Another point with which I disagree with the Administration bill is on the threshold test for monitoring. The Administration package suggests that monitoring will be ordered if the President determines there is a "reasonable indication that [the] industry is vulnerable to serious and irreparable injury as a result of surges in imports". There are two objections to this standard.

First, the standard needs clarification if it is to be used. An "irreparable injury" is not defined, but another part of the proposal suggests it is an injury "likely to be difficult to repair by reason of the perishability of the like or directly competitive product". It is hard to determine what conditions might satisfy that test.

Second, the standard is more stringent than the standard the International Trade Commission would apply in deciding whether to recommend relief. The ITC need only find that "an increase (either actual or relative to domestic production) in such imports. . .is a substantial cause of serious injury". Monitoring would be ordered if the President determines there is a "surge" of imports, suggesting that an industry must prove in the very beginning that it is likely to be harmed because of an absolute increase in imports, one exceeding historic import levels and occurring in a short period of time.

The decision to monitor clearly should be an entry-level decision that does not require an industry to litigate a complete escape clause case before USTR. The point of monitoring an industry should be to allow an industry to get help in building its case for emergency action. A "reasonable indication" that the test ITC must apply would be satisfied should be enough to give an industry access to monitoring and the emergency relief process.

Third, I would like to see a process included in any legislation we report to allow interim relief decisions to be reconsidered. We had such a process in last year's bill. If circumstances change so that interim relief is no longer appropriate, or if an industry is denied relief and can make a better case later on, a clear procedure must be available for that purpose.

Finally, we need to prevent confusion over escape clause terminology. The field is already sufficiently complex without adding possible disputes about whether USTR (for the President) or the International Trade Commission correctly interpreted the law defining an the industry or any other legal point. I suggest that we leave the International Trade Commission in control of the final decisions on these matters. The decision to monitor should be regarded as a very preliminary decision on such matters.

None of the problems I have with the Administration package are insurmountable. I am pursuing an agreement on these and other issues. While I would have liked to see all concerned agree on a single proposal before this time, I am pleased by the progress we have made and I look forward to installing a fast-track procedure in our import relief arsenal.

I. USTR chooses perishable crops to be monitored

A. Whether a product is deemed perishable is a "facts and circumstances" situation. Factors to consider in deciding what's perishable include. . .

1. short shelf life;

2. previous legislative or administrative designation as perishable;

3. substantially similar in characteristics or use and directly competitive with a fresh product;

4. short growing or marketing season for the fresh product;

5. Significant sales of fresh product or "spot market" sales are common in the industry; and

6. the fresh and processed products' production is largely integrated in the U.S..

Presence or absence of a single factor is not dispositive of perishability.

B. Process for deciding what crops are to be monitored:

1. Petition requesting monitoring is filed with USTR, alleging an article is perishable and grounds for monitoring are present.

2. USTR must publish notice of the filing in the Federal Register within 5 days of petition's receipt and solicit public comment on the request. USDA's views on the petition must be solicited at the same time public comments are taken.

3. Seven days after publication, USTR must decide whether an article is considered perishable and eligible for fast track relief.

4. If an article is determined to be perishable, USTR has another 14 days in which to decide whether to order ITC to monitor.

Both the decisions on perishability and monitoring must be published in the Federal Register with explanations of USTR's decision.

C. Test for deciding what crops to monitor: USTR must order monitoring if there is reason to believe a perishable product is being imported into the U.S. in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported article. Normal seasonal fluctuations in imports are not to be considered a substantial cause of serious injury or threat thereof.

II. If monitoring is ordered, USTR would order the International Trade Commission (ITC) to monitor imports of any perishable agricultural product. (Section 332 authority to USTR).

A. In such monitoring the ITC would accumulate all the information necessary for a section 201 case.

B. The duration of such monitoring would be limited to a period of 2 years.

C. In the absence of good cause, a one year waiting period would precede a reinvestigation on the same product. A two year waiting period would apply for investigations on products that obtained relief.

D. ITC questionnaires would be exempted from OMB review.

III. Monitoring must occur for a minimum of ninety days before the industry could file an escape clause action. At the petitioner's election (but no sooner than ninety days after monitoring begins) ITC must issue an interim report containing findings that state whether it is reasonably likely that a finding will be made that escape clause relief is warranted on the basis of the available information. If the information is insufficient to support such a finding, ITC must state why. Monitoring can be continued for up to two years. If a 201 action is filed, the ITC must make a decision with 14 days after the action is filed and the President must

TOY MANUFACTURERS OF AMERICA,
New York, NY, March 6, 1987.

JOSEPH K. DOWLEY, ESQ.,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building Washington, DC.

DEAR MR. DOWLEY: This statement is submitted by the Toy Manufacturers of America, Inc. (TMA) in response to the press release of January 28, 1987 of the Subcommittee on Trade, and presents TMA's views on certain proposals before the subcommittee as it considers comprehensive trade legislation.

TMA was founded in 1916, and today continues to represent the American toy industry. Its 250 members are responsible for 90 percent of the some $12 billion in annual toy sales in the U.S. In addition, they have a significant interest in toy sales around the world. As manufacturers, importers, and exporters, TMA members are strongly committed to the maintenance of an open international trading system which permits its member companies to take maximum advantage of world-wide efficiencies, thus holding down the costs of toys which must compete with many other products for the discretionary portion of the consumer's budget.

At the outset, it is important to make clear TMA's view that on amount of tinkering with U.S. trade laws is likely to have a significant effect on the U.S. trade deficit. While foreign unfair trade practices and restricted market access for American exports have certainly adversely affected particular companies and sectors, they have been only a minor contributor to the deterioration of the U.S. trade position. The root of the problem lies elsewhere, with misaligned exchange rates, U.S. fiscal policies, inadequate growth in productivity, world-wide structural shifts in basic industries and agriculture, and so forth. U.S. comparative advantage cannot be restored by the kinds of provisions you now have before you. That can best be accomplished by the creation of a stable, macroeconomic environment, both at home and abroad, which encourages investment, growth, and efficiency.

Because of these views, TMA fully supports legislation which will empower the President to negotiate and implement trade agreements in the course of the Uruguay round. That authority should be similar to that which was granted by the Trade Act of 1974, which provided for full congressional participation in and oversight of the negotiating process, with an opportunity to discuss implementing legislation before its submission under fast-track procedures. Tariff authority should be for a reasonable period of time to avoid disruption of negotiations, which realistically should last for 6 to 8 years. Fast-track authority to negotiate agreements for the reduction or elimination of non-tariff barriers should be permanent. Such authority should not be conditional, beyond the provisions presently in Section 101 and 102 of the 1974 Act. The objectives of the negotiations, as set forth by Congress in the authorizing legislation, should be to strengthen an open, non-discriminatory, multilateral trading system, and the institutions of that system, such as the GATT and the IMF, and to discourage the use of unilateral trade measures, barriers, or subsidies as a means of addressing international trade and monetary problems.

These comments do not address all of the various specific proposals to revise the trade remedy laws. We do wish to reiterate TMA's view that such legislation will have little, if any, effect on the problems afflicting U.S. industry and agriculture. There have been three major modifications of these laws in the past dozen years—the last, barely two years ago—without any discernable improvement in the U.S. trade position. In fact, it can be argued that the mistaken emphasis on imports in general, and the alleged unfair trade practices of our trading partners in particular, as the cause of the decline of certain U.S. industries has distracted the Congress and executive branch for addressing the real structural and fiscal causes of their decline.

The continuation of these misdirected efforts is apparent in one of the specific provisions of H.R. 3, upon which we would like to comment, the so-called Scofflaw Provision contained in Section 175. This provision would prohibit any person from importing for a 3-year period if during any 7-year period such person was either convicted of, or assessed a civil penalty for, three separate violations of one or more customs laws involving gross negligence, fraud, or criminal culpability. Orders issued under this provision with respect to multiple customs law offenders which are firms, corporations, or other legal entities apply to all officers and principals of the entity, as well as to any employee or agent of the entity who was directly involve in the violation concerned. Not only is the "person" prohibited from importing, but the "person" is prohibited from engaging "any other person for the purpose of introducing on behalf of the multiple customs law offender, foreign goods" into the United States.

TMA's opposition to Section 175 is premised on the following flaws which we perceive in this proposed legislation:

> This is a criminal statute, yet the provision is vague and imprecise in a number of respects, including (1) the definition of "convicted", and "finally determined", which have no certain meaning in the administrative penalty proceedings of the Customs service; and (2) the circumstances under which the "offender" is prohibited from purchasing products imported by others.
>
> The exposure to criminal liability of corporations, their officers and principals as the result of a series of non-criminal actions, determined by an administrative agency to constitute "gross negligence".
>
> The equation of negligent conduct with fradulent conduct.
>
> The apparent treatment of each entry which contravenes customs law in the manner described as a separate "violation", no matter how many entries the importer may make in a seven year period.
>
> The inclusion of insignificant, technical, civil violations, and the failure to distinguish them from those resulting in substantial revenue losses of other injuries to the U.S. economy.
>
> The failure to take account of the fact that the distinction between gross and simple negligence under Customs administrative proceedings is often arbitrary, especially when large corporations with many employees are involved and facts within the knowledge of one employee are considered to be "known" to all employees.

In summary, TMA believes that this provision is inherently inequitable and unjust, that it constitutes a denial of due process, and that it ignores the inevitability of human error in dealing with complex and often imprecise administrative procedures. Large corporations, such as many of TMA's members, whose employees process thousands of entries every year would be particularly vulnerable. They would be subject to the same threshold of collective and cumulative guilt as an importer who has one employee and makes ten entries in a year. As a result, volume importers would be forced to contest every administrative penalty proceeding in the courts to avoid the crushing sanctions flowing from any "final determination" of gross negligence. The possibility that totally innocent actions by uninformed or distracted low-level employees could result in a company being cut off from its overseas suppliers of hundreds of products, many of which are not even available domestically at any price, at an incalculable cost to the company's stockholders, employees, and to the consuming public graphically illustrates the absurdity of this provision.

The existing criminal and civil laws are more than adequate to deal with true criminal activity and civil misfeasance and malfeasance. This proposal is nothing but very thinly disguised *in terrorem* harassment of the importing community and ought to be rejected out-of-hand by the House of Representatives as unworthy of its serious consideration. Certainly there can be no question of such a provision advancing the stated objective of H.R. 3, which is to enhance the competitiveness of American industry. Such legal protectionism can only have the opposite effect, by helping to convince domestic producers that they do not need to maintain and improve their competitiveness because trade barriers such as this one will insulate them from foreign competition.

Again we urge that the Congress not pass ill-conceived and counter-productive trade legislation, just so it can be perceived to be doing something to address the complex causes of our deteriorated trade and current account balances.

Finally, we wish to express support for the extension of the duty suspension provisions for stuffed dolls and certain stuffed toy figures of inanimate objects, and the new duty suspension for certain stuffed toy figures of animate objects. These noncontroversial bills, which are of critical importance to the American toy industry have been included in Sections 845 and 859 of H.R. 3. There are no domestic sources for these products. TMA urges their immediate passage as a boon to American consumers, and to end the incertainty in the industry which has existed since the expiration of the previous suspension for stuffed dolls and inanimate objects at the end of 1985.

TMA appreciates the opportunity of making its views known to the Committee on these most important issues. We would be pleased to answer any questions the Committee or the staff may have concerning TMA's position on this legislation.

Respectfully submitted,

DOUGLAS THOMSON,
President.

STATEMENT OF THE TRADE REFORM ACTION COALITION

The Trade Reform Action Coalition (TRAC) appreciates this opportunity to submit written testimony on trade and competitiveness legislation to the House Ways and Means Committee.

TRAC is probably the largest private sector coalition ever formed for the purpose of promoting stronger U.S. trade laws. Founded some three and one-half years ago, TRAC includes member organizations that employ over 5 million people and represent well over $300 billion in annual sales (membership list attached). Industries represented include automotive parts, chemicals, fibers/textiles/apparel, footwear, furniture, leather goods, metalworking, non-ferrous metals, steel and steel distribution.

The TRAC member organizations believe that America's deepening trade crisis can only be resolved by looking at our trade competitiveness problem in its entirety. This means it is vital not only to promote U.S. exports, but also to ensure against unfair trade and market disruption in the U.S. market. Within this context, and as one key element, we urge substantial improvements to U.S. trade laws.

Our member organizations recognize that the record $170 billion U.S. trade deficit in 1986 cannot be reduced by changes in the trade laws alone, but it is essential to strengthen substantially U.S. trade statutes in any Congressional effort this year to restore America's international competitiveness. It is equally critical that the Congress set some limits on tariff-cutting authority for import-sensitive U.S. industries. This is needed to ensure that the positive effects of trade law reform are not undermined by injurious tariff cuts.

Of particular concern to TRAC is the massive damage caused to the domestic manufacturing base by the skyrocketing U.S. trade deficit. In addition to pervasive foreign unfair trade practices and foreign mercantilist trade policies, we blame a variety of factors for this deficit. One such factor clearly is the overvalued U.S. dollar against the currencies of non-Japanese and European competitors. Other factors include a general lack of coherence in U.S. trade policy and the American tendency always to be "reasonable" (i.e., to yield too quickly and too generously) in trade negotiations with foreign competitors.

Thus, we agree with those who say no trade legislation can provide a total solution to our trade crisis. On the other hand, America's manufacturing industries can no longer afford to ignore the problem of inadequate trade laws and trade law enforcement.

In particular, we can no longer afford to ignore the fact that U.S. dumping law fails to address diversionary dumping and provides no compensation to the victims of unfair trade; that no U.S. trade law is being applied effectively to non-market economies and that our subsidy law is not being applied at all; that the U.S. "escape clause" (Section 201) neither provides adequate relief nor promotes industry adjustment; that our Section 232 is not addressing national security trade threats in a timely enough fashion; and that Section 301 is not being effectively used to deal with foreign industrial targeting and state-owned enterprises.

The Trade Reform Action Coalition is committed to the goal of correcting these and other trade law deficiencies as a necessary component of advancing U.S. international competitiveness. For this reason, we supported most of the trade law provisions in the bill passed by the House last session (H.R. 4800). They addressed many of these concerns.

TRAC was particularly gratified that the Ways and Means Committee last year recognized the vital importance of dumping and subsidy law reform. These statutes are our main line of defense against unfair trade in the U.S. market, and they are potentially the most useful of all U.S. trade laws. That is why, this session, we strongly support retention by the House Ways and Means Committee of provisions in H.R. 3 that cover such key areas as diversionary dumping, "cumulation" and private damages for dumping.

There are, of course, some who would like to overturn the results of last session and backtrack from the strong trade bill the House passed in 1986. We do not agree. We think that now -- more than ever -- what is required is the strongest possible trade bill, and we are convinced the majority of Americans support this course.

Clearly, U.S. industries must bear the primary responsibility to improve their own competitiveness -- to reduce costs, increase productivity and improve product quality. However, government also has a key role -- to provide a consistent policy environment that allows for self-help efforts to succeed, and to ensure that vital U.S. industries are not sacrificed on the altar of an economic theory not practiced by others.

We refer here not only to the pie-in-the-sky model of pure free trade theory, but also to certain wholly unrealistic -- and totally unacceptable -- notions of "competitiveness." It is simply preposterous to think that any U.S. industry will ever be able to compete against 15-cent an hour labor, regardless of how lean and mean it gets and how technologically advanced its equipment. It is time instead to look at competitiveness in a broader context, one that recognizes that (1) key U.S. manufacturing industries are worth saving, and (2) foreign competition cannot be allowed to destroy our manufacturing base.

It is also time to end the fantasy that the U.S. trade deficit can ever be eliminated by the promises of foreign governments to open up their markets to U.S. exports. The only way for the Congress to deal seriously with our trade crisis is to address both the export and import sides of the ledger simultaneously.

The House Ways and Means Committee is to be commended for reporting out tough trade legislation last session. TRAC, for its part, is committed to working with the Committee to achieve similarly strong trade legislation this session. What follows is a summary version of TRAC's 1987 legislative priorities. We thank the Committee for considering these recommendations as it moves to mark-up on H.R. 3.

TRAC's Dumping and Subsidy Law Priorities and Other Key Proposals for Omnibus Trade Legislation

There is a bipartisan consensus in both houses of Congress that omnibus trade legislation, including stronger U.S. trade laws, should be enacted in 1987. The Trade Reform Action Coalition[1/] agrees with, and actively supports, this Congressional consensus.

TRAC supports the objectives of restoring U.S. international competitiveness and eliminating the record U.S. trade deficits that have caused massive damage to our manufacturing base.

[1/] While not all TRAC-related groups agree necessarily with each detail of every proposal, all support the basic thrust of TRAC's recommendations. In addition, many TRAC-related groups support other generic trade law reform proposals not specifically addressed in this package (e.g., strengthening U.S. protection of intellectual property rights).

To accomplish these goals, the United States requires a more forceful trade policy. To revitalize the U.S. manufacturing base, we need to correct the many flaws in Sections 201 (injury) and 301 (unfair trade practices) of the Trade Act of 1974; insert strict time lines in Section 232 (national security) of the Trade Expansion Act of 1962; and limit tariff-cutting authority with respect to import-sensitive products. Yet, if American industry is to be competitive in the U.S. market, it must also have effective tools to deal with the market distortions caused by dumped and subsidized imports. Without fair trade in the U.S. market, we will not be able to solve our "big picture" trade problem. Therefore, the omnibus trade bill that is passed by the Congress this year must include key dumping and subsidy law changes.

I. Dumping and Subsidy Law Issues

1. DIVERSION. This problem occurs when dumped or subsidized products are used as raw materials or components in so-called "downstream" products. Two areas of primary concern relate to "diversionary dumping" (addressed in H.R. 3, S. 439 and S. 490) and "upstream subsidies" (addressed in S. 439). Examples of "diversionary dumping" occur if Peruvian yarn, subject to a dumping finding, is incorporated into sweaters (from Peru or elsewhere) that are sold in the United States; or if dumped French steel, subject to a quota Arrangement, is incorporated into British machinery that is then exported to the U.S. An example of "upstream subsidies" occurs when subsidized Brazilian steel is incorporated into a Brazilian farm implement that is sold in the United States. Current practice, however, is not to extend the upstream subsidy law across national boundaries, e.g., when subsidized French or Italian steel is used in a German machine tool that is sold in the United States.

   Solution: Legislation to:

   - provide the right to redress the injury that occurs when imported products contain dumped components (at present, only subsidized components are partially covered by U.S. trade law.);

   - permit the International Trade Commission to monitor and, if warranted, the Commerce Department to investigate imports of products that contain components or raw materials subject to (a) large antidumping or subsidy duties or (b) a quota arrangement;

   - enlarge the third-country application of current upstream subsidy law from subsidies paid by a customs union to subsidies paid or authorized by a customs union or its members; and

   - address the unfair trade practice that occurs when foreign producers charge one price for raw materials used in products consumed domestically, and another (lower) price for raw materials used in products that are exported.

2. INJURY DETERMINATIONS.[2] The International Trade Commission (ITC) is required to follow the statutory guidelines set down by Congress in determining whether

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[2] A third issue related to injury determinations -- involving products where price is the predominant market factor -- is dealt with under "miscellaneous amendments."

there has been material injury to a domestic industry. Recently, however, some Commissioners have used extraneous factors in determining injury. These have no basis in law and flout Congressional intent. Another key problem is "cumulation." The 1984 Trade and Tariff Act allowed for cumulation, the combining of unfairly traded (dumped and subsidized) imports from several countries to determine if, in aggregate, they injure a domestic industry and thus require remedies to offset the unfair trade practices. However, as recognized in H.R. 3 and S. 439, the ITC has tended to interpret this provision more restrictively than Congress intended. The result has been denial of relief to industries injured by unfairly traded imports.

Solution: Legislation to:

- clarify that the ITC may only look at the volume, price and impact of imports when considering whether material injury to a domestic industry has occurred.

- require the ITC to assess the combined impact of unfairly traded imports on a domestic industry. Such imports would be combined whether dumped or subsidized; irrespective of their geographic distribution in the U.S.; whether or not they are from countries that have signed the GATT Subsidies Code; and whether they are under investigation, are covered by quantitative restraint (QR) Arrangements or by recent (within 12 month) orders or suspension agreements that do not involve QRs. In addition, cumulation would be mandatory in threat of material injury determinations.

3. PRIVATE DAMAGES. As recognized in H.R. 3 and S. 361, if a domestic producer is injured by dumping, it currently has no effective private damages remedy to compensate it fully for the injury that has occurred. Current law only provides relief for injury from future imports, which is not a sufficient deterrent to predatory dumping. Also, as recognized in S.361, current law provides no opportunity to recover for customs violations, including fraud.

   Solution: Legislation to create effective damages remedies that would permit domestic producers to receive compensation for the full extent of injury caused by dumping and customs fraud.

4. SUBSIDIES CODE COMMITMENTS: In the past, when the U.S. has accepted commitments by foreign governments to eliminate subsidies (and the U.S. has granted the benefit of an "injury test"), there have been instances where such commitments either have not been honored or have been ineffective.

   Solution: Legislation that would essentially codify existing Administration practice by requiring both strong foreign government subsidy commitments and full compliance. This would ensure that all bilateral subsidies agreements include at least the elements of:

   - phase out -- the commitment to eliminate all export subsidies in a specified period of time;

   - standstill -- the commitment not to increase or add new export subsidies; and

   - provisional application -- the understanding that the injury test will be revoked following violation of the agreement.

5. DEFINITION OF SUBSIDY. Under current law, duties to offset domestic subsidies provided by foreign governments can only be applied against loans that are inconsistent with commercial considerations and against the provision of goods or services on preferential terms.

   Solution: As recognized in H.R. 3 and S. 439, it should be possible to apply offsetting duties against subsidized imports, whether they have benefited from loans that are inconsistent with commercial considerations or from loans made on preferential terms; likewise, countervailing duties should apply not only against goods or services provided on favorable terms, but also against goods or services that are offered on terms inconsistent with commercial considerations.

6. NON-MARKET ECONOMY (NME) IMPORTS. Present dumping law procedure against non-market economies is too unpredictable; present countervailing duty law has been interpreted as not applying to imports from non-market economies; and Section 406 (NME market disruption) has been a totally ineffective statute.

   Solution: Amendments to:

   - provide, in NME dumping cases, for an artificial pricing benchmark (the weighted average of free market producer prices including U.S. producers) and an alternative approach (at petitioner's request) using factors of production;
   - clarify explicitly in U.S. subsidy law that it applies to all countries, i.e., that non-market economy countries can and do subsidize their exports to the U.S.; and
   - improve Section 406 (as a complement, not replacement, for other NME import remedies) by (1) reducing the injury causation standard (to "increasing" imports that are an "important" cause of injury); (2) reducing discretion; and (3) transferring decision-making authority from the President to USTR.

MISCELLANEOUS AMENDMENTS. A number of additional problems continue to reduce the effectiveness of these laws.

Solution: Legislation to:

- ensure that the Commerce Department does not use improper adjustments when calculating dumping margins;
- clarify that the U.S. government is not exempt from paying penalty duties when it imports dumped and subsidized products;
- create a better way for determining injury in cases involving products where price (not product differentiation) is the most important market factor; and
- permit recovery of attorney/consultant fees in successful trade cases.

II. Section 201 Escape Clause Issues

Section 201, the so-called "escape clause", has not been effective to provide relief or to promote adjustment.

Solution: Amendments to:

- reduce the injury causation standard from "substantial cause" to "cause";
- clarify that the term "cause" does not exclude relief in situations where other factors contribute significantly to injury;
- require that industry adjustment (not phase-out) take place, but limit the ability of the President to disregard the recommendations of the ITC for relief;
- strike the language in current law that urges that import relief after three years be phased down "to the extent feasible";
- give the President authority to increase (as well as reduce) the level of relief to recipient industries; and
- ensure that any additional Presidential relief options -- such as unfair trade filings, antitrust exemptions or multilateral negotiations -- supplement, and not replace, existing 201 remedies unless requested by the petitioner.

III. Section 232 (National Security Trade Ca[illegible] Issues

Section 232 currently lacks any requirement that the President make a decision within a specified period of time. This discourages Section 232 petitions and is potentially harmful to U.S. national security.

Solution: Legislation to impose a strict time deadline on Presidential responses in Section 232 cases following an affirmative decision by the Secretary of Commerce.

IV. Section 301 Issues

Section 301 has historically failed to address promptly foreign government acts, policies and practices that are unreasonable, discriminatory or burdensome to U.S. commerce.

Solution: Amendments to:

- clarify that Section 301 applies to state enterprises that sell goods and services on terms inconsistent with commercial considerations;
- establish a separate track for foreign industrial targeting;
- permit disclosure of confidential business information under administrative protective orders; and
- require USTR to send out questionnaires to foreign governments and verify all information received.

V. Tariff-Cutting Authority

U.S. manufacturing industries are today much worse off than they were before the last round of multilateral trade negotiations (the Tokyo Round), which concluded in 1979. Nevertheless, the U.S. is now embarked on a major new round of trade negotiations, where it is expected that the price to be paid for opening up developing country markets to U.S. exports, services and investments will be further U.S. tariff cuts on manufactured goods.

> Solution: Legislation that would allow the President to enter into a new trade round with authority to negotiate tariff reductions, but language that would limit the scope of such authority to those products currently eligible for duty-free treatment under the Generalized System of Preferences (GSP). This would ensure that tariff-cutting authority does no further damage to import-sensitive U.S. manufacturing industries. In addition, because there are probably many products currently eligible for GSP that are also import-sensitive, there should be strict limits set on tariff cuts for these products as well.

* * *

Trade Policy and Competitiveness Issues

The U.S. can no longer afford to treat trade and competitiveness policy as disconnected from other vital policy concerns, because our deepening trade crisis is a threat to U.S. national security as well as to our standard of living. Because this crisis has hit our manufacturing sector the hardest, we need to state clearly that, if America is to be a world-class economic power well into the 21st century, we cannot be simply a service economy. While TRAC, at this time, is not making specific legislative proposals in the area of trade and competitiveness policy, we think it is critical that the Congress deal with the following:

- The eroding U.S. manufacturing base;
- The central role of the U.S. manufacturing trade deficit in our overall trade deficit;
- The need to preserve vital U.S. industries, not debate "free trade" versus "protectionism";
- The fact that U.S. trade deficits are comprised of two parts -- sluggish U.S. exports and rapidly rising U.S. imports;
- The exchange rate imbalance that continues with key U.S. trading competitors outside of Western Europe and Japan;
- The size of the federal budget deficit and its relationship to the U.S. trade deficit;
- The ability of the U.S. Customs service to enforce its rules and regulations;
- The need to review in a comprehensive way U.S. laws, policies and procedures in regard to foreign trade zones and subzones;

- The impact on our international competitiveness of U.S. tax laws, anti-trust rules and environmental regulations;

- The unnecessary controls that continue to limit U.S. export opportunities;

- The fact that the world in 1987 (with pervasive state ownership, control and financing of industry) is very different from what it was in 1947 when the GATT was founded; and

- The probability that the Uruguay Round of new GATT negotiations will not be a panacea for our growing trade crisis.

TRADE REFORM ACTION COALITION (TRAC)

Alliance of Metalworking Industries
Amalgamated Clothing and Textile Workers Union
American Apparel Manufacturers Association
American Brush Manufacturers Association
American Chain Association
American Cutlery Manufacturers Association
American Die Casting Institute
American Federation of Fisherman
American Fiber, Textile, Apparel Coalition
American Furniture Manufacturers Association
American Gear Manufacturers Association
American Institute of Steel Construction, Inc.
American Iron and Steel Institute
American Metal Stamping Association (Washer Division)
American Mushroom Institute
American Pipe Fittings Association
American Textile Machinery Association
American Textile Manufacturers Institute
American Wire Producers Association
American Yarn Spinners Association
Anti-Friction Bearing Manufacturers Association
Automotive Service Industry Association
Association of Die Shops International
Association of Steel Distributors
Association of Synthetic Yarn Manufacturers
Bicycle Manufacturers Association of America, Inc.
Brass and Bronze Ingot Institute
Carpet and Rug Institute
Cast Iron Soil Pipe Institute
Cast Metals Association
Clothing Manufacturers Association of America
Committee on Pipe and Tube Imports
Copper and Brass Fabricators Council, Inc.
Cutting Tool Manufacturers Association
Expanded Metal Manufacturers Association
Footwear Industries of America, Inc.
Forging Industry Association
Group of 33
Hand Tools Institute
Industrial Fasteners Institute
Industrial Perforators Association, Inc.
Industrial Unions Department, AFL-CIO
International Ladies' Garment Workers Union

International Leather Goods, Plastics and Novelty Workers Union
Investment Casting Institute
Iron Castings Society
Knitted Textile Association
Lead-Zinc Producers Committee
Luggage and Leather Goods Manufacturers of America, Inc.
Man-Made Fiber Producers Association, Inc.
Metal Cutting Tool Institute
Metal Treating Institute
Metalworking Trade Coalition
National Association of Chain Manufacturers
National Association of Hosiery Manufacturers
National Association of Pattern Manufacturers
National Association of Uniform Manufacturers
National Cotton Council of America
National Foundry Association
National Knitwear Manufacturers Association
National Knitwear and Sportswear Association
National Tooling and Machining Association
National Wool Growers Association
Neckwear Association of America
Non-Ferrous Founders' Society
Northern Textile Association
Outdoor Power Equipment Institute
Plumbing Manufacturers Institute
Scale Manufacturers Association, Inc.
Steel Founders' Society
Steel Plate Fabricators Association, Inc.
Steel Service Center Institute
Synthetic Organic Chemical Manufacturers Association
Textile Distributors Association, Inc.
Tool and Die Institute
U.S. Battery Trade Council
U.S. Fastener Manufacturing Group
Valve Manufacturers Association
Welded Steel Tube Institute
Work Glove Manufacturers Association

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Statement submitted by David J. Steinberg, President, U.S. Council for an Open World Economy, to the Subcommittee on Trade of the House Committee on Ways and Means in hearings on U.S. trade policy
February 1987

(The U.S. Council for an Open World Economy is a private, non-profit, public-interest organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall national interest. The Council does not act on behalf of any "special interest".)

As I have been contending for many years in presentations to Congressional committees and other forums, a coherent trade strategy urgently, incisively and constructively addressing the nation's real problems and needs in this critical policy area should be raised to a national priority no lower than that assigned to national security. In fact, these two policy areas are closely interdependent.

The job that needs to be done to correct the serious weaknesses and vulnerabilities that have arisen in the U.S. foreign-trade position, and beyond that the country's overall international economic position, will not and cannot be done without consistent and persistent progress toward (a) a much more open and equitable world trading system, (b) commensurate adjustment of our domestic economy to the challenges and opportunities of such an international economic environment, (c) effective coordination of monetary, fiscal, education and all other policies bearing materially on this issue into a coherent, credible strategy, convincing to the American people and the world at large. The trade-policy component of this strategy should be a definitive, deliberate, expressly free-trade policy. This we have never had and are not now planning. Outside of our Council, there appears to be no one in the legions of self-styled "free traders" who, at least in public forums if at all, advocates such an initiative.

The legislative measures recently introduced by members of Congress, as well as proposals expected from the Administration, do not constitute a coherent strategy clearly delineating the highest goals to which our sights need to be raised, and the steps that must be taken to achieve these goals. Several proposals are constructive and deserving of support, but there is too much, misconceived "quick fix" in the expectations for too many of the others -- short-term illusions that appear to satisfy the aggressive inclinations of many legislators but poorly serve both long-run objectives and short-term needs. Even the proposed delegation of trade negotiating authority to the President does not redeem the proposed policy package. The supposed objectives of the negotiation seem as ill-defined and uninspiring as the assortment of buzzwords -- fair trade, competitiveness, reciprocity, etc. -- that swarm around the trade-policy dialogue these days.

Freer and fairer trade at the pace to which we have become accustomed, even in the last 10 or 20 years, is not good enough. Even the additional objectives projected for the next round of trade negotiations (services, agricultural reform, etc.) do not elevate U.S. trade policy, and the pace of freer and fairer trade per se, to where they ought to be. What is now being programmed for the next round of trade negotiations (the round of the 1980's, which will probably be the last round until late in the 1990's if not the last concluded in this century) will not be enough to reduce barriers, remedy unfairness, achieve reciprocity, increase productivity and enhance competitiveness to the degree required by the nation's economic and overall policy needs in the closing years of the 20th century. Too much backing and filling has distorted the course of commitments to freer trade throughout the world trading system. Progress toward freer and fairer trade, under today's policy and the one that seems in the offing, is likely to remain as erratic as it has always been. Even with the inclusion of sectors heretofore untouched by the many rounds of trade negotiations, many exceptions to more-open trade will linger. Our trade-policy goals need to be redefined with greater precision, and determination to reach them needs to be more resolute than the United States and its trading partners have thus far demonstrated.

Free-Trade Initiative

The initiative whose time has come should aim at programming the removal of all trade barriers and all trade inequities by the United States in concert with as many of the highly developed countries as are willing to join us in such a compact -- a "free trade area" in accordance with established international rules. The reciprocity which only a free-trade arrangement makes possible would be the ultimate, the greatest possible reciprocity -- envisioning, not only overall, "macro" reciprocity signifying each country's overall balance of give-and-take vis-a-vis each of the other contracting parties (as in past rounds of trade negotiations, none of which projected totally free trade), but "micro" or sector reciprocity as well (the programmed removal of all barriers without exception). Sector reciprocity is today more meaningful or important for some industries than others, but programming reciprocal removal of all barriers by the contracting parties (permitting the greatest possible leverage for trade-offs) is the framework essential to securing free-and-fair trade for the sectors for which a "level playing field" is vital. Today's pace of world economic development and competition warrants this new dimension in trade reciprocity. Inclusion of all products and practices without exception (though the timetables for some would undoubtedly be different from what is practical for others) could be expected to ease inevitable political resistance in all the participating countries to the phasing-out of trade restrictions in certain products and practices, inasmuch as each country would be able to cite long-nurtured, politically significant barriers the other contracting countries were required to phase-out under the free-trade arrangement.

Just as only the negotiated programming of totally free trade between participating countries can achieve the optimum (the ultimate) reciprocity that ought to be our goal, so it is also the only way to achieve the totally fair trade (or the closest possible approximation) for which we should be striving. The reason is that nothing so sweeping and electrifying as the prospect of totally free trade is capable of stimulating the domestic and foreign-economic reforms (including international monetary modifications) which totally fair trade would demand. Conversely, the programming of totally fair trade (no practices or policies exempted) is indispensable, economically and politically, to the programming of totally free trade. In short, totally free trade and totally fair trade are one and inseparable -- one strategy indivisible. And only a strategy of such scope -- only a premise of such magnitude factored into the whole fabric of decision making both of government and the private sector -- is capable of spurring the all-out resolve and resourcefulness that must be invested in the competitiveness to which the nation's best efforts must be committed.

Only the premise of a convincing national commitment to free trade will evoke the all-out commitment to export expansion that is essential to the national interest. Such a commitment may also be indispensable to the viability of many U.S. corporations under conditions of steadfast national implementation of a free-trade agreement. Moreover, such a compact, and a domestic adjustment strategy that effectively backstops it, are more capable of defusing protectionism than are the less ambitious stratagems of today's conventional wisdom.

After carefully developing a strategy to maximize public and political support at home, the President should launch the free-trade initiative by inviting the economically advanced countries to join us in negotiating a "free trade area" under the rules of the General Agreement on Tariffs and Trade. It would program totally free and totally fair trade, allowing no product or other exemptions of any kind, in accordance with a realistic timetable. Less-developed countries willing to make broad, "liberal trade" commitments within their greatly limited capacity (pending their ability to make more-detailed, more-ambitious commitments at a later time) should be entitled to the market access the participating advanced countries agree to provide one another, without being required to provide equivalent access to their markets until some distant "millennium".

The compact should be negotiated even if only one country accepts the U.S. invitation. If the U.S. initiative is credible, all the advanced countries, sooner or later, will participate -- a lot sooner than most skeptics might expect, for the price of staying out would be too high. The prospect of dependable progress toward free-and-fair trade, dispelling various uncertainties (and what are sometimes called "shocks") that often induce mercantilistic measures by countries feeling the need to protect themselves against disruptive developments inimical to their interests, would be one of the incentives to negotiate a free-trade arrangement.

The adjustment strategies needed in domestic policy to backstop such a trade-policy initiative must be more far-reaching than the now jaded term "adjustment" conveys. A credible commitment to national "redevelopment" and "full employment" should set the tone and the pace of the national, indeed nationwide, effort needed to ensure that the definitive, deliberate, free-trade initiative advances the best interests, not only of the nation as a whole, but of every state in the Union. The President should form an inter-agency "council on national economic development" (with appropriate funding by Congress and appropriate accountability to Congress) as the clearly identifiable focal point of such a domestic economic commitment. Ways should be found to bring the governors of all the states and the chief executives of all local governments into the process of formulating and fulfilling this domestic economic strategy. Close consultation with industry, agriculture, labor and other private sectors would also be essential.

Government assistance to industries that merit such aid should take the form of coherent strategies addressing the real problems and needs of these industries and the people who depend on them for livelihood. Import restriction, if justifiable at all, should be only one component of a comprehensive package of government, industry and labor commitments. The adjustment strategy should include reassessment of all statutes and regulations materially affecting the industry's adjustment capability, to determine if there are any inexcusable inequities that need correcting.

Quest for the Best

The recruitment slogan of the United States Army seems appropriate for the trade strategy whose time has come: BE ALL THAT YOU CAN BE. This means striving, not just for "competitiveness", but the greatest possible competitiveness. Not just "fair trade", but the fairest trade. Not just "reciprocity", but the ultimate in reciprocity -- ratcheting barriers downward toward programmed removal, not upward in a cycle of reciprocal moves and countermoves. Not just "free trade" as some "holy grail" always beyond reach in the real world, but a realistic goal that is worth the best shot of countries (like ours) wealthy in capital resources and human resourcefulness. A carefully crafted free-trade strategy is essential to honing those flavory but fuzzy buzzwords into the worthy objectives they ought to be.

Factoring a free-trade premise into the entire range of decisions that shape the nation's international economic performance would impel, indeed compel, the best our economic system can do -- the best we can be. International respect for U.S. policy, worldwide confidence in the U.S. economy, and a healthy, stable exchange rate for the U.S. dollar would be among the many rewards. The far-reaching steps the other participating countries would have to take in "redevelopment" and other adjustments would translate into more-rapid growth and higher standards of living in those countries -- in turn into greater demand for the kinds of goods in which the United States excels. All factors taken into account, it may confidently be anticipated that the U.S. trade balance and our overall balance of international payments would be restored to the condition vital to this country's economic viability and leadership capability.

The policy perspective I am proposing cannot rightly be dismissed as a long-term proposition long in idealistic theory but short of ways to address today's troubling problems. Harmful imbalances in the nation's international accounts certainly demand remedial action, but short-term and long-term policies need not and should not be mutually exclusive. The fact is that the admittedly long-range strategy I have outlined would yield substantial short-term dividends as steps are quickly taken to adjust to and capitalize on this dramatic initiative. Although the massive budget and trade deficits, and the nation's disturbing shift from international creditor to debtor status,are more reflective of failings in domestic policy than in trade policy, a properly designed free-trade initiative would stir extraordinary efforts to solve the domestic problems as quickly and responsibly as possible. The mobilization toward this end would be unequaled since World War II.

If we lack the capacity and the will to ensure both the short-term and long-term success of such a strategy in both foreign-economic and domestic-economic terms, then America, the Western Alliance and the world economy are in deeper trouble than we have thus far cared to acknowledge.